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Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 464

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MORTON SALT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1947
CERTIORARI GRANTED JANUARY 19, 1948

In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8703

MORTON SALT COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

Petition for Review of Order of the Federal Trade Commission.

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1 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION, ss:

In the Matter of
Morton Salt Company } Docket No. 4319

I, Otis B. Johnson, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

Part 1—Pleadings
Part 2—Testimony (Pages 1 to 893, inc.)
Part 3—Testimony (Pages 894 to 1864, inc.)
Part 4—Testimony (Pages 1865 to 2716, inc.)
Part 5—Testimony (Pages 2717 to 3597, inc.)

except original exhibits to testimony which, in accordance with agreement between counsel, will be certified later.

That also transmitted herewith is a full, true and complete copy of the Trial Examiner's Report and Exceptions related to this proceeding.

That this transcript and Trial Examiner's Report and Exceptions are certified to the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated July 28, 1944, entered by the Federal Trade Commission in the above indicated proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 30th day of December, A. D. 1944.

Otis B. Johnson,
Secretary.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

(Caption—4319)

COMPLAINT.

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), as amended by an Act approved June 19, 1936, entitled "An act to amend Section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondent hereinafter described is violating and has been violating the provisions of said Clayton Act as amended hereby issues its complaint stating its charges in that respect as follows:

Paragraph One: Respondent Morton Salt Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business at 208 West Washington Street, Chicago, Illinois.

Paragraph Two: Respondent corporation is now and has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing salt in all parts of the United States. The respondent is one of the largest producers and distributors of salt in the United States and occupies a dominating position in said industry. Respondent sells its products to wholesalers, retailers, corporate chains, voluntary chains. Respondent sells and
4 distribute its products in commerce between and among the various states of the United States and in the District of Columbia and preliminary to or as a result of such sale causes such products to be shipped and transported from the places of origin of the shipment to the purchasers thereof who are located in states of the United States and in the District of Columbia other than

the state of origin of the shipment, and there is and has been at all times herein mentioned a continuous current of trade in commerce in said products across the state lines between respondent's plants or factories and the purchasers of such products. Said products are sold and distributed for use, consumption and resale within the various states of the United States and in the District of Columbia.

Paragraph Three: In the course and conduct of its business as aforesaid respondent is now and during the time herein mentioned has been in substantial competition with other corporations, individuals, partnerships and firms engaged in the business of selling and distributing salt in commerce between and among the various states of the United States and the District of Columbia.

Paragraph Four: In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged one with the other in the sale of said products within the United States.

The said discriminations in price are brought about by the following practices and policy pursued by the respondent, to wit:

(1) A discount amounting to approximately five per cent of the list price is allowed to all customers who purchase a carload of salt.

(2) In addition to the carload discount hereinbefore referred to in paragraph (1) hereof, a five per cent discount is allowed to customers whose purchases of salt during a twelve consecutive month period are equal to or in excess of fifty thousand dollars.

5 (3) To customers who purchase five thousand or more cases consisting of twenty-four packages to a case during a twelve consecutive month period of "free running" table salt and "iodized" salt, a discount of 10¢ per case is granted, and to customers who purchase fifty thousand or more cases of the above type salt, a discount of 15¢ per case is granted. Said discount is not in addition to, but in lieu of the discounts referred to in paragraphs (1) and (2) hereinbefore mentioned.

The discount referred to in paragraph (2) heretofore mentioned is allowed to customers of the respondent who do not purchase from the respondent fifty thousand dollars worth of salt during a twelve consecutive month period, provided, however, the total purchases of salt from all sources made by said customer total fifty thousand dollars during said given period of time. In the industry this type of selling is known as "split business", that is, basing the price upon the requirements of a customer and not upon the actual quantity purchased from the respondent.

In addition to the discriminations effected by the aforementioned discounts respondent discriminates in price between different purchasers of its products, and such price discriminations result from respondent's selling said salt to an individual customer where the delivery thereof is made to several branches or outlets of said individual customer at prices based upon the total quantity or volume delivered to all of the separate branches or outlets of said customer provided such total quantity or volume amounts to the required minimums during the twelve consecutive month period as set forth in paragraphs (2) and (3) hereinbefore mentioned and not upon the quantity or volume delivered by the respondent to the respective branches or outlets of such individual customer.

In the industry this type of selling is known as "combine selling", that is, basing the price upon the total quantity delivered to all the separate branches or outlets of an individual customer and not upon the quantity delivered to the respective branches or outlets of said customer.

Paragraph Five: The effect of the discriminations in price generally and specifically mentioned in Paragraph Four herein has been and may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and has been and may be to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

Paragraph Six: The foregoing acts and practices of said respondent are violations of subsection 2(a) of Section 1 of said Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of an act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes."

Wherefore, the premises considered, the Federal Trade Commission on this 18th day of September, A. D. 1940, issues its complaint against said respondent.

NOTICE.

Notice is hereby given you, Morton Salt Company, respondent herein, that the 25th day of October, A. D. 1940, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why
7 an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the
8 complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 18th day of September, A D, 1940.

By the Commission.

Otis B Johnson,
Secretary.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION

(Caption—4319)

ANSWER OF MORTON SALT COMPANY, A CORPORATION, TO COMPLAINT.

In answer to the complaint heretofore filed herein, the Morton Salt Company respondent, says:

Paragraph One: The respondent admits the allegations of Paragraph One of the complaint except that the respondent says that it has its principal place of business at 310 South Michigan Avenue, Chicago, Illinois.

Paragraph Two: Answering Paragraph Two of the complaint, respondent admits that it is now and has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing salt in the United States. It admits that it is one of the larger companies producing and distributing salt in the United States. It admits that it sells its products to wholesalers, retailers and consumers. It admits that it sells and distributes its products in commerce among the various states of the United States and in the District of Columbia and in connection therewith causes such products to be shipped from the places of origin to purchasers thereof in other states. Except as hereinabove expressly admitted, respondent denies all other allegations of Paragraph Two.

Paragraph Three: Respondent admits the allegations of Paragraph Three of the complaint.

Paragraph Four: Answering Paragraph Four of the complaint, respondent admits that in the course of its business it pursues the practice and policy of allowing the following discounts, to wit:

(1). With respect to certain products of the respondent, a discount amounting to approximately 5% of the list price is allowed to a buyer who purchases a carload, and in all cases where such discount is allowed to a buyer who purchases a carload, an equal discount is allowed to buyers whose individual purchases are each less than a carload but who combine their purchases to form a carload, such carload being known in the trade as a "pool car".

(2) In addition to the discount above referred to in paragraph (1) hereof, a discount of approximately 5% is allowed to a buyer whose purchases of table salt during a twelve consecutive month period are equal to or in excess of $50,000.00; and said discount of approximately 5% is also allowed by respondent to any buyer who is receiving a similar discount from a competitor of respondent.

11 (3) To a buyer who purchases, in any twelve consecutive month period, 5,000 or more cases of the brand of table salt known as "Morton's" salt, a discount of 10¢ per case is allowed.

(4) To a buyer who purchases, in any twelve consecutive month period, 50,000 or more cases of said "Morton's" salt, and for whom the respondent does not do any sales work of the type known in the trade as "specialty work", a discount of 15¢ per case is allowed.

The discounts described above in paragraphs (3) and (4) are not in addition to the discounts described above in paragraphs (1) and (2).

In determining whether or not a buyer is entitled to any of the discounts hereinabove referred to, the respondent follows the practice and policy of basing such discounts upon its total sales to such buyer at all points of delivery.

Except as hereinabove admitted, the allegations of Paragraph Four of the complaint are denied.

Paragraph Five: Respondent denies the allegations of Paragraphs Five and Six of the complaint.

Paragraph Six: Further answering, the respondent says that the differentials in price hereinabove set forth make only due allowance for differences in the cost of manufacture, sale and delivery resulting from the different methods and quantities in which the commodities of the respondent are sold and delivered to the purchasers thereof.

12 Paragraph Seven: Further answering, the respondent says that the lower prices resulting from the discounts hereinabove set forth are made for the reasons above set forth in Paragraph Six and in good faith to meet equally low prices of competitors of the respondent and the services and facilities furnished by competitors.

Paragraph Eight: Further answering, the respondent says that the said sub-section (2a) of Section 1 of said

Act of Congress approved June 19, 1936, is void and of no effect because said Act contravenes the provisions of the Constitution of the United States, in that said Act forbids the doing of acts in terms so vague, indefinite and uncertain as to fail to inform persons what is unlawful, delegates undefined powers to the Federal Trade Commission to control and regulate commerce, sets up unreasonable and unintelligible standards of lawful conduct, attempts to regulate commerce without regard to whether the same is interstate or intrastate, and casts the burden of proof upon the accused.

Wherefore, the respondent requests that the complaint filed herein be dismissed.

Morton Salt Company,
By Daniel Peterkin,
Its President.

Address: 310 S. Michigan Avenue,
Chicago, Illinois.

Stearns & Jones,
Attorneys for Respondent,
Address: 310 S. Michigan Avenue,
Chicago, Illinois.

1 BEFORE THE FEDERAL TRADE COMMISSION.

(Caption—4319)

Room 1123,
New Post Office Building,
Canal and Van Buren Streets,
Chicago, Illinois,
Monday, April 13, 1942.

Met, pursuant to notice, at 10:00 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., (Washington, D. C.), appearing for Federal Trade Commission.

L. H. McBride, Esq., (310 South Michigan Avenue, Chicago, Illinois), appearing for Respondent.

6 Mr. Haslett: Ready for the Commission, your Honor.

Mr. McBride: Ready for the respondent.

Mr. Haslett: I would like for the record to show, Mr. Examiner, that, without any desire or intention of reflecting on anyone, that insofar as the examination of employees and officials of the respondent, Morton Salt Company, it is obvious that the position of the Commission and this respondent is adverse.

I would also like for the record to show, for the sake of brevity, respondent Morton Salt Company will be referred to as Morton.

Mr. Examiner, at this time I want to give notice to the respondent and to the Commission, through the record, that at the close of the taking of testimony in support of the Commission's case, that I will make proper motion before the Commission to amend the complaint herein in accordance with the facts that I propose to introduce during the course of this proceeding. My proposed motion to the Commission to amend the complaint herein will include the naming as respondents of any and all wholly owned subsidiaries, controlled, managed, or operated by the respondent Morton Salt Company.

I call as my first witness Mr. Daniel Peterkin, president of the Morton Salt Company.

7 Daniel Peterkin, Jr., was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

Mr. Haslett: In order that the record may be clear, Mr. Peterkin, the questions I am about to propound to you will be confined to salt sold by your company for the years beginning June, 1936, intermediate to September 18, 1940, inclusive.

By Mr. Haslett:

Q. And your name is Daniel J. Peterkin?

A. No, Daniel Peterkin, Jr.

Q. And where do you reside, Mr. Peterkin?

A. In Chicago, Illinois.

Q. Mr. Peterkin, are you here in response to a subpoena duces tecum duly served upon you by the Federal Trade Commission?

A. I am.

Q. And have you certain documentary evidence with you called to be produced by that subpoena duces tecum?

A. We have some of the evidence.

Mr. Haslett: May I have it, please, sir?

(Documents passed to Mr. Haslett.)

Mr. Haslett: Mr. Examiner, at this time I want to make a short statement for the record in regard to the sub-

8 poena duces tecum, that certain items called for will be furnished either this afternoon or tomorrow or at a later date during the hearing here in Chicago and I am ready to proceed with the examination of this witness as far as I can possibly go without utilizing the information called for in the subpoena.

Trial Examiner Purcell: You may proceed, sir.

By Mr. Haslett:

Q. In what business are you engaged, Mr. Peterkin?

A. Producing and selling salt.

Q. And with what company or firm are you associated?

A. Morton Salt Company.

Q. What position do you hold with that company, sir?

A. President.

Q. How long have you been president, sir?

A. Since March 19, 1941.
Q. And who was your predecessor?
A. Mr. Daniel Peterkin, my father.
Q. Your father?
A. Yes.
Q. And he had been with the firm for how long?
A. Since 1896.
Q. I see, sir. And the business of the Morton Salt Company is processing, producing, selling, and distributing salt?
A. That is correct.
Q. In practically all States of the United States?
A. Virtually all states.
Q. And are you a member of the Board of Directors of the Morton Salt Company?
A. I am.
Q. How long have you been a member of the Board?
A. Since 1937.
Q. 1937?
A. Yes.
Q. And it is a corporation, sir?
A. It is.
Q. And incorporated under the laws of what State?
A. Illinois.
Q. When was it organized, do you know?
A. It was incorporated in 1922.
Q. As the Morton Salt Company?
A. As the Morton Salt Company.
Q. Do you know the names of the present officers?
A. Yes.
Q. Could you give them to me?
A. Mr. B. W. Carrington, chairman of the Board; I have given you my [redacted] position; Mr. J. A. Clements, executive vice president; Mr. Wirt Morton, vice president; Mr. Preston McGrain, vice president; Mr. Sterling Morton, secretary; Mr. R. K. Warren, treasurer.
Now, are any of the officers of the Morton Salt Company also on the Board of Directors?
A. Yes.
Q. Would you name those officers that are on the Board?
A. All of the officers above named, and in addition Mr. Mark Morton, Mr. Joseph N. Cudahy.
Q. Is that all, sir?
A. That comprises our Board of Directors.

Q. Then am I correct when I state that the officers you named, together with yourself and Mr. Cudahy and Mr. Mark Morton, comprise the Board of Directors?

A. That is correct.

Q. And where is the principal office of the Morton Salt Company?

A. Room 400, 310 South Michigan Avenue, Chicago.

Q. Does it maintain branch offices throughout the United States?

A. It does.

Q. Will you give us the location of each branch office, sir?

A. There are branch offices located in San Francisco, California, Los Angeles, Dallas, Texas, Salt Lake City, Kansas City, Missouri, Minneapolis, Milwaukee, Detroit, Michigan, St. Louis, New Orleans, Nashville, Tennessee,
11 Washington, D. C., and New York City, New York. I believe that is all.

Q. Now, how many plants does Morton Salt Company operate?

A. The Morton Salt Company operates plants at--- do you want the location?

Q. The location, sir.

A. At Port Huron, Michigan; Manistee, Michigan; Hutchinson, Kansas; Kanopolis, Kansas; Grand Saline, Texas; Saltair, Utah; and Newark, California.

Mr. Haslett: May we go off the record, your Honor?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Did you finish naming the locations of the various plants?

A. I did.

Q. Will you kindly state what territory is covered by each of your various sales offices, your branch offices? Like the New Orleans office, what States are covered by the salesmen operating out of the New Orleans office?

A. Well, our sales territories are not bounded exactly by State lines. But the New Orleans office covers part
12 of the State of Louisiana, Mississippi in its entirety, and part of the State of Alabama, and a small portion of the State of Florida.

Q. I see. Does it cover as far as Tallahassee, Florida?

A. No, it does not.

Q. Now will you name the geographical territories covered by each of your various branch offices, those in addition to the New Orleans office, if you can? If you cannot name them, I would rather you would reserve your answer and get the information and we will put it in at some later date. It is quite an order to ask for all of that.

Trial Examiner Purcell: I suggest it might be well to get a small map of the United States and let the witness delineate the exact boundaries of the various territories, unless you have some particular object in pursuing your investigation along that line at this time.

Mr. Haslett: I have no objection, your Honor, to taking a map and naming the geographic territories covered by each branch office.

By Mr. Haslett:

Q. Do you think you could do that, sir?

A. I can. It would probably be better because of the delineations within State boundaries between one office and another.

Trial Examiner Purcell: Not only that, but it would furnish a short of visual delineation rather than to have to go to the record for each one.

13

Mr. Haslett: Your Honor, if we may have just a few moments recess, I will go into the office and get a map and bring it back.

Trial Examiner Purcell: Very well.

(A short recess was taken.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, am I correct when I state that you will prepare a statement showing the geographical territories covered by salesmen working out of the various branch offices and will furnish it at a later date in this hearing.

A. Yes, I will.

Q. Can you give us the dollar volume of annual business done by the Morton Salt Company in all types of salt for the years called for in the subpoena? Could you estimate it, sir?

A. Do you mean gross dollar volume?

Q. That is right, sir.

A. No, I am afraid I could not. If you want those figures, I can get them for you.

Q. If you can get them for me, sir, we will put it in at some later date.

A. All right.

14 Q. And then would it be possible to get them also as to the dollar volume of business done under each type or grade of salt, like free running salt, the amount sold, and iodized salt, and then the commercial salt?

A. Those figures would be rather difficult to obtain from our records. We do not break the figures down just that way.

Mr. Haslett: I see, sir. Off the record for a minute, your Honor?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Could you state whether or not your business increased in the year 1937 over 1936?

A. I believe it did, but I would prefer to refer to my records before making a definite answer.

Q. That would not be of great difficulty?

A. No, sir.

Q. Could you get the same information for the year 1938 over 1937, 1939 over 1938, and 1940 over 1939?

A. I can.

Q. I would appreciate that.

A. You refer to that as dollar volume?

Q. That is right, the dollar volume. Would it be possible to obtain for us, Mr. Peterkin, the dollar volume of business done in each processing plant for the years

15 1936, 1937, 1938, 1939, and 1940?

A. I am afraid the best I could do there is give an estimate.

Q. Well, an estimate would be satisfactory if you could, sir, but not putting you to a great deal of difficulty.

A. I believe that we can get those figures but they will be an estimate.

Q. I see. I would appreciate it if you would, sir, and you will furnish it at some later date?

A. I will.

Mr. McBride: Pardon me. Is that by plants, did you say?

Mr. Haslett: By plants, producing plants.

By Mr. Haslett:

Q. Will you kindly state the method or manner in which Morton Salt Company distributes its products?

A. I am not just sure of that question.

Q. You testified that you have branch offices located throughout the United States.

A. That is correct.

Q. Now, have you in those branch offices salesmen who solicit customers in the various territories?

A. Our branch office personnel has charge of salesmen the Morton Salt Company distributes its products?

who travel throughout the territory under their direct
16 supervision.

Q. And what are the duties of the salesmen?

A. The solicitation of orders from all classes of trade within their sales territories; the promotional and merchandising work that we hope they do in connection with the distribution and sale of our salt.

Q. Then they contact prospective customers and also old customers and solicit orders, transmit the orders to their branch office, and they in turn transmit them to the main office?

A. That is substantially correct.

Q. Then as a result of those orders, commodities are shipped from the various plants direct to the customers?

A. In some cases.

Q. And they are billed out of the main office or out of the branch office?

A. Both. That is, in some instances the Chicago office, which is our main office, handles the invoicing of the merchandise. In other cases the branch office may handle the invoice.

17 Mr. Haslett: May we go off the record just a minute, Mr. Examiner?

Trial Examiner Purcell: Yes, off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. What I would like to know, Mr. Peterkin, is this: The method and means in which orders are obtained from

the various types of customers, and the methods and means in which those orders are transmitted to your office, as the result of which commodities, salt, are shipped from the various plants to the customers. Now, will you outline that for us, please, sir?

A. Our orders are obtained in several different ways. For instance, an old established customer of ours may mail to us an order for a carload or more of salt or less. In other cases the customer waits for one of our salesmen to call upon him before he places his order.

In the first instance the customer may mail his order to the branch office, and usually does, being more familiar with the personnel of that office than he is with the Chicago office, although in some few instances the orders are mailed direct to Chicago. In the case of the salesman soliciting orders and obtaining them on personal call, he would white up an order form, with which he is provided,
18 submit that to the branch office and papers are then made up covering the instructions to our Chicago office or direct to the plant, as the case may be, to facilitate the shipment of the merchandise called for on that order.

Q. Is all of the bookkeeping transaction kept in the Chicago office?

A. Not all.

Q. Some of the bookkeeping transactions as to the making out of bills and the bills of lading are handled through the various branch offices?

A. In some instances.

Q. Well, in those instances which you have in mind, do they eventually transmit the orders to the Chicago office where a permanent record is kept of the transaction?

A. Not in complete detail.

Q. The Chicago office gets information of the transaction though by some means or method, is that true?

A. Generally speaking, yes.

Q. Does your company send out monthly statements to its various customers?

A. Statements covering just what?

Q. Purchases during the preceding month.

A. With reference to open accounts, you mean?

Q. That is right, sir.

A. Yes.

19 Q. And are they sent out from the Chicago office?

A. In some instances.

Q. And in some instances through the branch office?

A. That is correct.

Q. Now, are there any other methods or means employed by Morton to sell its products, other than the ones you have told us about? Do they have salesmen going out of the Chicago office visiting all of the territories where the branches are located, sir?

A. You mean visiting our other offices?

Q. The customers that purchase through the other offices. Is it a duplication of sales effort?

A. No, I would not say that it is. We occasionally have members of our Chicago office staff visit the branch offices, and in some instances they may visit certain customers within the branch office territory.

Q. But that is the activity of probably the vice president in charge of sales or someone under him, is that correct, sir?

A. Yes.

Q. More of a pep talk and push than anything else, I guess.

A. We hope it is.

Mr. Haslett: Just a moment, off the record, your Honor?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, would you please state the classes of customers that are sold directly by Morton Salt Company? That is, wholesalers, retailers, give us the various classes of customers, sir.

A. I think we can generalize by saying that there are principally three classes, wholesalers or jobbers as they are sometimes called, retailers and consumers.

Q. I see. Now, in the wholesalers, there is a class of wholesale grocery men that have various branches?

A. Some do.

Q. Such as Thomas & Howard, C. D. Kenney Company, they have branches located in several states, is that correct, sir?

A. Well, I am not familiar with that individual account, but some wholesalers do have branches in several states.

Q. Then there are wholesalers that have one unit, that that is the sum and substance of the organization, is that correct?

A. That is correct.

Q. And they are also customers?

A. Yes.

21 Q. Then you have retailers. Would you classify your various retailers, if you can, sir?

A. We consider a retail buyer one who sells our product direct to a consumer.

Q. I see, sir. And have you chain stores in that category?

A. I imagine that chain store operators would come under that classification.

Q. And co-operative chains such as N. R. O. G., would that be in that class?

A. I am not familiar with their method of doing business.

Q. I see, sir, the A. & P.?

A. The A & P?

Q. Yes.

A. I would consider that they would be termed retailers.

Q. Now, have you any single unit retailers that you sell direct to, sir?

A. Yes.

Q. You do?

A. Yes.

22 Q. Now, will you classify your consumer customers, large consumers?

A. I am not sure that I understand what you mean by classify.

Q. Are there various types of customers that buy direct from Morton Salt Company and use salt in the manufacture of various products?

A. Yes.

Q. Such as the curing of hides?

A. For an example, the tanners, meat packers, in fact, almost all industries.

Q. Use salt?

A. Use salt.

Q. Glazing industry?

A. Glazing.

Q. Curing of hides?

A. Yes.

Q. That type of customer.

A. They are generally considered as consumer accounts.

Q. Mr. Peterkin, you have list prices for various territories, is that correct, sir? Do you publish a list price for, say, the State of Indiana, that would cover Indiana and Ohio and another state?

A. We publsh price lists. They are used by our sales department for quoting our products.

23 Q. And is there one price list or are there a number of price lists?

A. There are several price lists.

Q. And you have a price list for a particular territory?

A. I am not just sure that I understand the purpose of your question.

Q. Maybe we can clear it up with these price lists that I have in the file here.

Mr. Haslett: Mr. Reporter, I hand you herewith a document and ask you that you mark it for identification as Commission's Exhibit No. 1.

(The document above referred to was thereupon marked "Commission's Exhibit No. 1," for identification.)

Mr. Haslett: Mr. McBride, is it stipulated, or am I correct when I say that it is stipulated by and between counsel for the Commission and counsel for the Respondent that the document marked for identification as Commission's Exhibit No. 1 is a true and correct copy of the price list, Scale S-26, superseding Scales S-25 and R-1, dated June 25, 1936, covering states of Alabama, Arkansas, Florida, South Carolina, Mississippi, Louisiana, Georgia and Tennessee.

Mr. McBride: A true copy of that scale, yes.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

24 Mr. McBride: No objection.

Trial Examiner Purcell: The reporter will mark the instrument Commission's Exhibit No. 1 in evidence.

(The document above referred to, heretofore marked for identification "Commission's Exhibit No. 1," was received in evidence.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you what is known as Commission's Exhibit No. 1 and I ask you whether the list

price in this document represents the published price of Morton Salt Company for its various items only within the states specified upon the exhibit?

(Handing document to witness.)

A. This Scale S-26 represents the published prices on certain of the grades of sale we have in this territory within the boundaries of the states shown on the cover thereof.

Q. And in other states that you sell you product that are not listed on the cover of this document, are the same prices, or were the same prices in effect?

A. They may be the same.

Q. And they may not have been the same?

A. And they may not have been the same.

Q. If they had been the same, the names would appear on the list, is that correct, sir?

25 A. On which list?

Q. On this list, if there were other states.

A. They might have appeared on this list, or we may have published another list which had the name of the states not included hereon.

Q. I note in Commission's Exhibit No. 1 that you have Anchor, Jack Rabbit, and Big B fine graduated kiln dried salt. You have heard of that type of salt?

A. Yes.

Q. 280 pounds net per barrel. Now, where it states rates in cents per hundred pounds, that is 8.5, is that what it costs per hundred pounds in that particular territory, sir?

A. No, these scales of the type which you have here are prepared by our sales department as a statistical department for the use of our own salesmen, for their convenience, and at the top of each list there appear certain figures. You refer to one as being 8.5. That represents a freight rate column of 8½ cents per hundred pounds. The salesman in referring to the freight rate book for any particular state in which he is working will look at the town in which he is engaged in the soliciting of orders, and will find the rate applying from our plant or plants to that town. That will give him the heading of a column in this scale, and from that column he obtains his delivered price based upon the freight rate then published for that particular town.

26 Q. And those freight rates are promulgated and prepared in your Chicago office?

A. Those freight rates are prepared by the Interstate Commerce Commission.

Q. But you prepare a booklet stating the freight rates as to the various territories?

A. For our convenience, we assemble the various rates applying on salt that are given to us by the Interstate Commerce Commission, and which we obtain through our traffiic department. Those rates are assembled in a booklet or a book for the convenience of our salesmen.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. I referred a little while back to Anchor, Jack Rabbit and Big B fine granulated kiln dried salt. I notice that on a hundred pound sack in cotton it is 72½ cents per sack of a hundred pounds in the territories as listed on the front of Commission's Exhibit No. 1, is that correct, sir?

A. No, that is not correct.

Q. Will you explain that, please, sir?

A. The 72½ cent price to which you refer is in the column designated as 8.5, so that the delivered price of a

27 hundred pound bag of granulated salt under the brand names mentioned would be 72½ cents at any point taking an 8½ cent freight rate.

Q. I see.

A. 8½ cents per hundred pounds.

Q. Is that freight rate based upon the basing point of any particular place in each of these states mentioned on Commission's Exhibit No. 1?

A. No. Those figures at the head of each column are the actual freight rates as published by the Interstate Commerce Commission on salt.

Q. Freight rates from where to where, sir?

A. From any producing point of salt as recognized by the Interstate Commerce Commission to any town carrying that particular freight rate. It may be in any one of those states.

Q. It may be in any one of these states?

A. Or in all of them.

Q. This price list, then, does not show the basic plant price of salt?

A. May I see it a minute?
Q. Yes, sir.
(Handing document to witness.)
A. This particular price list does not, but it could be very easily ascertained by deducting 8½ cents from the
28 72½ cents shown.
Q. And that would show the basic plant price?
A. Approximately.
Q. For 100 pounds Anchor, Jack Rabbit and Big B fine granulated kiln dried salt?
A. That is correct.
Q. Would the price of a hundred pound cotton bag of Anchor, Jack Rabbit and Big B fine granulated kiln dried salt be the same to all customers purchasing salt from your company?
Trial Examiner Purcell: Let me have that question, please.
(The question above referred to was read by the reporter.)
The Witness: What price do you refer to?
Mr. Haslett: Well, may we be off the record?
Trial Examiner Purcell: Off the record.
(There was a discussion off the record.)
29 Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. You asked me, Mr. Peterkin, what price I have reference to. I will take the price that we have been talking about at 72½ cents per hundred pounds less the freight rate of 8.5. Would all customers sold in the territories in the States named on Commission's Exhibit No. 1 receive that price?
A. Not necessarily.
Q. They would get different prices for the same amount of salt?
A. Will you restate that question?
Q. Would there be different prices for the same amount of salt, the same grade and quality?
A. There will be the same price for the same grade of salt in the same quantity to all customers.
Q. In this particular territory. But that price might vary in other territories, is that correct, sir?
A. It might vary in other territories, depending upon market conditions.

Q. Does the competition have anything to do with it?
A. Very definitely.
Q. What is the price obtained at the present time for the free running salt in 24 packages per case?
A. I presume you mean our factory brand under Morton's name.
30 Q. That's right, Morton's free running salt in the round package, blue package.
A. The price on that quantity of salt is $1.50.
Q. Per case?
A. Per case.
Q. And there are 24 packages to a case?
A. 24 packages to a case.
Q. Are all customers buying Morton's free running salt in the 24 packages to a case, that is, the Morton advertised brand in the round package, paying $1.50 for that particular salt?
A. All customers are paying our published prices on Morton's free running and iodized salt. $1.50 per case is the cost to any customer, with the exception that there are some buying in quantities for which we have lower prices published.
Q. We will get into the quantity a little later, Mr. Peterkin. But am I correct when I state that all customers in every State where that product is sold are paying the list price of $1.50 per case, except those customers who get a quantity discount?
A. With that exception, yes.
Q. Is the same true as to Morton's iodized salt?
A. By "iodized salt", you refer also to 24 packages
31 to a case?
Q. That's right, sir.
A. Under the blue label?
Q. Under the blue label.
A. That is correct, sir.
Q. That is correct?
A. Yes, sir.
Q. Is there any difference between the free running salt and iodized salt in the quality?
A. The iodized salt is treated to provide iodine content.
Q. And the free running is not?
A. The free running is not. It is plain, without iodine.
Q. I will ask you to refer to the back of Commission's Exhibit No. 1 and ask you to state if that is a reasonable

facsimile of the package of Morton's free running and Morton's iodized salt.

A. It is.

Q. And that is the type that is being sold to customers now at $1.50 per case, is that correct, sir?

A. That is correct.

Q. You mentioned a few moments ago, Mr. Peterkin, that competition has something to do with the price at which salt is sold to customers in particular territories?

A. That's correct.

Q. Would you state the method employed by any
32 representative in charge of any particular branch office of your company when it is his desire to raise or lower the price of salt manufactured by your firm and sold by him as an agent to your various customers?

A. Our sales representatives have nothing whatsoever to do with the prices of our products.

Q. The price is fixed and determined in the Chicago office?

A. That's correct.

Q. And it is sold according to the price list?

A. That is correct.

Q. You stated that competition does play some part in it. If a competitor of yours was selling salt of the same grade and quality as Morton's salt at a cent or two cents, say, per package lower than Morton's salt, would that in any way affect your business?

A. Are you referring now to the—

Q. The free running salt, sir.

A. The free running salt and the iodized?

Q. Yes, sir.

A. It has some effect on our business, yes.

Q. Would your salesmen in charge of any of the branch offices have the power to lower the price to come in line with that price that had been quoted by a competitor of yours?

A. No, he would not.

33 Q. He would have to submit it to the Chicago office before he could get authority to do that, sir?

A. Submit what?

Q. Submit the price of the competitor to the Chicago office.

A. He would have to submit what information he had regarding the price of our competitor's product, together with his recommendations.

Q. And that would be taken into consideration in determining the price?

A. That is correct.

Trial Examiner Purcell: We will have a five-minute recess, gentlemen.

(A short recess was taken.)

Trial Examiner Purcell: The recess is over.

Mr. Haslett, at this time you suggested to the Examiner that because of the pressure of time in the conduct of business of Mr. Peterkin and Mr. McBride, that it is desirable during these hearings to grant a two-hour recess for lunch on the agreement that the testimony in Chicago, this phase of the testimony in Chicago, would be completed by Thursday afternoon. Is that correct, sir?

Mr. Haslett: That is correct. The purpose of that, Mr. Examiner, is to allow Mr. Peterkin and Mr. McBride to devote some time to their business. Mr. Peterkin is
34 president of a large corporation and he is the active president and takes a great interest and activity in the operations of the company. Mr. McBride is the senior partner of a large law firm and he has other things, and I feel that we can dispose of this phase of the Commission's case in Chicago by Thursday evening.

If, however, we find by Wednesday that we are running behind, I am sure Mr. McBride will agree to cutting the lunch hour and to run a little later in the afternoon.

Trial Examiner Purcell: That is perfectly agreeable to the Examiner.

Mr. McBride: I would appreciate that arrangement, if we could do that.

Trial Examiner Purcell: It is my disposition, of course, to be agreeable to every reasonable suggestion for the convenience of witnesses and counsel.

Mr. McBride: Thank you.

The Witness: I very much appreciate that.

Mr. Haslett: Mr. Reporter, will you read the last question and answer, please?

(The question and answer above referred to were read by the reporter.)

By Mr. Haslett:

Q. How many different types of salt are processed and sold to your customers by the Morton Salt Company?

35 A. There are a great many different types of salt. Basically, there are relatively few. Do you refer to the basic type of salt?

Q. Let's take the basic first and have you explain the basic types of salt produced by your company.

A. There is what we term a granulated salt, known in the trade as granulated salt, which is produced from brine and evaporated in vacuum pans. There is grainers salt, which is known in the trade as medium, which is also produced from brine and processed through open pan evaporation. There is also rock salt, which is mined, and solar salt, which is produced from solar evaporation in open ponds. Those are the four basic types of salt.

Trial Examiner Purcell: Just a second. Will you read that answer to me, Mr. Reporter, please?

(The answer above referred to was read by the reporter.)

By Mr. Haslett:

Q. From what source does the table salt come?

A. It may come from all four sources.

Q. Do you have any particular grade or type of salt of which the free running salt is produced?

A. You refer again to the blue package?

Q. That's right, sir.

A. That is processed from the granulated or
36 vacuum pan type of salt.

Trial Examiner Purcell: Vacuum what?

The Witness: Pan, p-a-n.

By Mr. Haslett:

Q. For the Examiner's information, would you explain that, please, vacuum pan; just tell the various methods that are used to obtain the salt from the vacuum pan?

A. The vacuum pan process is a process of treating brine or evaporating brine in closed receptacles under vacuum, utilizing the theory that water or liquids boil at lower temperatures under vacuum than they do in ordinary atmospheric pressures. The salt that is obtained from these vacuum pans is generally of a cube crystal structure. They are very small cubes as contrasted to the grainers or open pan evaporated product, which produce a crystal or a group of crystals, whose general appearance is that of a flake or flat substance, similar to a snow flake.

Q. Let's take the same procedure as to the solar salt.

A. Solar salt is produced from brine which is allowed to concentrate in out-of-door ponds, the evaporation taking place under ordinary atmospheric conditions and through the heat of the sun and air, the action of the air.

Q. And the mined salt is just mined like any other—

A. Mined salt is mined in the same manner as coal.

Q. And it comes out in large blocks, chunks?

37 A. It comes out in large and small chunks.

Q. Then that salt could be granulated through processing, is that correct, sir?

A. It is crushed and screened to various predetermined sizes.

Q. Does the Morton Salt Company own and operate any trucks to be used in the transportation of its product from its various plants?

A. Yes.

Q. Have you any trucks that are used to transport products from your various warehouses?

A. We have.

Q. Have you warehouses located in the same territories that your branch offices are located, branch sales offices are located, sir?

A. To some extent.

Q. Could you give me the location of the branch warehouses where salt is stored?

A. We have warehouses in Minneapolis, Milwaukee, Chicago, Detroit, New York City, New Orleans, Kansas City, Los Angeles, San Francisco, and Seattle. I believe that's all.

Q. And various grades of salt are stored in these warehouses?

A. That's right, they are.

Q. And as sales are made, trucks call for the prod-

38 ucts at the warehouses and distribute them to the various customers, is that correct, sir?

A. That may be correct in some instances.

Q. It might be your trucks and it might be the customer's trucks?

A. That is correct.

Q. And it might also be a common carrier?

A. Either common carrier or by truck or by rail.

Q. Is salt a perishable commodity?

A. I don't know what you mean by "perishable."

Q. Would it get within a certain period of time where it would be of no more use?

A. No, that is not substantially correct. Salt deteriorates to the extent that it may become useless for the specific purpose for which it was desired by virtue of becoming hard, that is, becoming lumpy. It does not deteriorate in the same sense of the word that fresh fruit becomes rotten.

Q. How long would the Morton's free running advertised round blue package salt keep before it becomes unusable?

A. That depends entirely upon the treatment to which it is subjected.

Q. The atmospheric conditions would have something to do with it, sir?

A. It might.

39 Q. If it was kept in a damp place, it probably would go quicker than if it was on a dry shelf, is that correct, sir?

A. That is substantially correct.

Mr. Haslett: Mr. Examiner, for the record, and in order that it may be kept straight, whenever I refer to Morton's free running salt, I mean Morton's blue package, which is in a round carton, free running salt, as represented on the back of Commission's Exhibit No. 1; and when I refer to Morton's iodized salt, I mean a package of the same type, same shape and same size and same color, as represented on the back of Commission's Exhibit No. 1.

By Mr. Hazlett:

Q. Will you state whether or not your company allows rebates, discounts, allowances, or any savings of any kind, or free goods, to any of its customers?

A. We do not.

Q. You do not, sir?

A. No.

Q. Do you allow any discounts?

A. We do.

40 Q. Would you state the discount that is allowed on a carload basis?

A. We allow a carload discount to purchasers of our products in carloads, which is an amount approximately equal to five per cent of the net works basis of the particular item involved.

Q. Is that five per cent discount deducted from the invoice price?

A. It is generally shown on the invoice.

Q. But are these occasions where it is not shown?

A. I can think of none.

Q. Do you allow to all customers who purchase on a carload basis the five per cent discount?

A. We allow to all customers who purchase in carloads an amount approximately equal to five per cent of the works basis. It is not a percentage discount. It is an amount.

Q. Equal to five per cent?

A. Approximately equal to five per cent.

Q. Will you elucidate on that a little bit, sir? Is it a flat unit discount?

A. It is a flat unit discount.

Q. A definite sum of money?

A. A definite sum of money.

Q. And that definite sum would equal approximately five per cent of the carload price, is that correct, sir?

41 A. Of the net works basis price.

Q. What do you mean by net works basis price, sir?

A. I mean by that the listed price of the particular item at our plant.

Q. And that deduction is then not taken from the invoice price, which would show the freight, but it is on the net invoice price, is that correct, sir?

A. It makes no difference.

Q. It makes no difference. Do you sell to all customers on a freight prepaid basis?

A. No.

Q. You sell to some customers where freight is collected?

A. Yes.

Q. Will you explain why that is done, sir?

A. It may be done for several reasons, principally for the convenience of the customer.

Q. Some more reasons, if you know? Will credit have anything to do with it?

A. In some instances credit might have something to do with it. It is a matter of our judgment as to the best way to handle the particular case.

Q. Will you explain in some detail the manner and method in which salt is billed to customers where the freight is figured in the price of the salt and is on a prepaid basis?

A. The order from the customer in that instance
42 would be priced from the scale of prices used by the salesmen, and applying to the sales territory in which he is working. The billing would be rendered on a delivered price basis and the customer would pay on that basis. The Morton Salt Company would pay the freight. No allowance for freight would be made to the customer.

Q. And then the customer would pay the face of the invoice, less any discount that he may receive on the carload basis, is that correct, sir?

A. That is correct.

Q. Will you explain the method and manner in which salt is priced and billed to customers where the freight is deducted by the customer from the invoice price?

A. In that case the sale is made by the salesman in the same manner as above described, the price shown on the order being that arrived at by the salesman by utilizing his scale of prices applying in his territory, after he has referred to his freight rate book. The billing would be rendered on a delivered price basis. The customer would pay the freight and submit to the Morton Salt Company evidence of his payment of the freight to substantiate an allowance of a similar amount from our invoice.

Q. And the evidence would probably be a bill of lading?

A. Paid.

Q. Marked paid?

43 A. Paid freight bill.

Q. Would he then deduct the freight from the invoice price and send the net amount to the Morton Salt Company in payment for the invoice?

A. That is correct.

Q. Now, would the five per cent, or approximately five per cent, be deducted from the invoice price before the freight was deducted or after the freight was deducted?

A. It would make no difference, because the unit discount to which you refer as being a five per cent discount is an amount of money and is not in any way associated with a percentage of either the plant cost or the delivered cost. It is simply an amount.

Q. Would it be possible for you to obtain for us a list showing the price at the present time of each commodity sold by your company and the flat unit discount granted on such an item based upon a carload basis?

A. Yes.

Q. Would that be a great deal of difficulty, sir?
A. No.
Q. You could do that at lunch time?
A. This afternoon, yes.
Mr. McBride: Excuse me. You are talking about a current scale now?
Mr. Haslett: Current scale, yes.
44 Trial Examiner Purcell: Off the record.
(There was a discussion off the record.)
Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, you have referred to a flat unit discount, which is approximately five per cent of the list price. Am I correct when I state that the flat unit discount which is granted on a carload basis is equal to or approximates five per cent of the net price of the commodity being sold, or the particular type of salt sold, is that correct, sir?
A. Substantially so.
Q. Now, will you tell me approximately what percentage of your customers purchase on a carload basis?
A. That is a difficult question to answer accurately.
Q. Approximately, sir.
A. I would approximate about 90 per cent.
Q. About 90 per cent purchase on a carload basis?
A. Yes.
Q. And receive the carload discount?
A. That would be my best guess.
Q. Of that 90 per cent, what percentage would you say is taken off the invoice price and what percentage would be paid either in the form of a check or in the form of credit memorandums?
45 A. In the case of a carload discount, all of the discount allowed is shown on the invoice.
Q. On the invoice price?
A. Yes.
Q. So, then, the customers who purchase in the carload bracket and receive a carload discount receive such discount in the form of a deduction from the invoice price, is that correct, sir?
A. It is part of the invoice price.
Q. It is a part of the invoice price?
A. Yes.

Q. And would show on the invoice?

A. That is correct.

Mr. Haslett: I think this would be a good place to stop right here.

Trial Examiner Purcell: Very well. We will recess until 2:00 o'clock.

(Whereupon at 12:05 p. m., a recess was taken until 2:00 o'clock p. m. on the same day.)

46 DANIEL PETERKIN, JR., resumed the stand and testified further as follows:

Direct Examination by Mr. Haslett (Continued).

Q. Just to clear up a couple of matters, Mr. Peterkin, I believe you stated your address is now 310 South Michigan Avenue, is that correct, sir?

A. That is correct.

Q. And, as alleged in the complaint, you were supposed to be at 208 West Washington Street?

A. That is correct; that was our former address.

Q. Will you straighten that out, please, sir?

A. We formerly maintained our main office at 208 West Washington Street in Chicago and were doing business at that address at the time this complaint was filed, but we have since moved our main office to another building located at 310 South Michigan.

Q. I see, sir. You stated on your direct examina-
47 tion this morning that the approximately 5 per cent carload discount is granted to approximately 90 per cent of your customers who purchase on a carload basis.

A. That is merely a guess on my part. Probably more than 90 per cent.

Q. Now, do you have some customers who purchase your products but not on a carload basis who receive a carload discount on what they do purchase?

A. No, not to my knowledge.

Q. Well, do you grant a 5 per cent discount on what is known in the trade as pool cars?

A. We do not grant a 5 per cent discount in any case.

Q. Well, approximately 5 per cent discount on carload basis is what we are talking about, sir.

A. We grant what we call a unit discount to a partici-

pant in a carload, and that participant may be purchasing less than the required minimum weight of a carload but his salt moves as part of the carload.

Q. And he receives the unit discount on the amount that he purchases?

A. That is correct.

By Trial Examiner Purcell:

Q. What is the unit? Is the unit the carload or is the unit a case?

A. Well, the unit that I am speaking of is the dis-
48 count amount, which we term a unit of discount.

Q. Oh, a unit of discount?

A. That is correct.

By Mr. Haslett:

Q. And that unit discount on a carload basis amounts to approximately 5 per cent of the invoice price?

A. It amounts to approximately 5 per cent of the net works basis price, not necessarily of the invoice price.

Q. But of the net works basis price?

A. That is correct.

Q. And when you say "net works basis", you mean the price at the processing plant?

A. At our plant.

Q. And "works" means plant, is that right?

A. That is correct.

Q. Now, can you explain to the Examiner, Mr. Peterkin, what you mean by a pool car?

A. A pool car is a term familiar to the industry and designates a carload of salt made up of several different purchasers, rather, made up of the purchases of several different customers but moving on the carload rate of freight.

Q. And where a unit discount of approximately 5 per cent of the net works basis is granted, it is split among the purchasers of that particular car, is that correct, sir?

A. It may or may not be.

49 Q. Now, can you elaborate on that just a bit when you say it may not be?

A. The carload unit of discount may be allowed to a purchaser of a carload of salt in which car there may be other purchasers who have purchased their salt from the customer taking the carload. In that case we have nothing to do with the reinvoicing of that salt.

Q. I see, sir, So where it is for resale through one of your customers, you have nothing to do with the discount basis?

A. That is correct.

Q. But where you invoice directly to customers making up a carload, you do grant the 5 per cent, approximately 5 per cent net works discount on the purchases of the particular ones making up the pool car, is that correct, sir?

A. If they were direct purchasers.

Q. If they were direct purchasers, and if they are not, the one who is making the purchase gets the unit discount?

A. That is true.

Q. Now, do you grant a unit discount, and when I say a "unit discount" I mean the approximately 5 per cent net works discount, to any customer or customers who split a car of salt between any one of their particular warehouses?

A. I am not sure that I understand that, split a car between any one of their particular warehouses?

Trial Examiner Purcell: Read the question, Miss Reporter.

Mr. Haslett: Read the question, Miss Reporter, please.

(The question above referred to was read by the reporter.)

The Witness: I do not see how they could split a car between any one of their warehouses.

By Mr. Haslett:

Q. Have you any customers that have a group of branch offices or branch warehouses?

A. We have some customers that operate through several branches.

Q. I see, sir. Has there been an occasion where a sale has been made to that particular customer where part of the car was left off, say, at A and part at B?

A. Yes.

Q. And would the 5-percent discount, the unit discount which we are speaking of, on the net works basis, be applied to that type of a sale?

A. The purchaser would in effect be buying a carload of salt from us. If he requests that it be stopped at A for partial unloading, he would still be granted the unit discount on each portion of the carload at points A and B.

Q. I see, sir, Mr. Peterkin, you stated this morn-
51 ing that you distribute and sell your products through salesmen who are under the control and jurisdiction of your company?

A. That is correct.

Q. Is there any other means of distribution of your products? Do you sell through brokers?

A. We do not sell to brokers.

Q. Through brokers, I said, sir.

A. We sell on occasion through brokers.

Q. And those brokers are your agents?

A. I suppose they would be termed as our agents.

Q. You have a standard form of contract that you have with your brokers?

A. Yes.

Q. And that contract, among other things, called that they are to represent you in all transactions?

A. That is correct.

Q. And has there been an occasion where you have made a sale through your salesman to a particular customer and also granted brokerage to a broker in that territory on the same sale?

A. It is possible that might have been true.

Q. Do you, of your own knowledge, know whether that has ever happened, sir?

A. I do not of my own knowledge.

Q. Have you any customers that have purchasing
52 offices where you allow the discounts to the purchasing office and where the sale is made direct to its various members or its branches?

A. We occasionally sell salt to a customer on orders issued from the main office of that customer for delivery to one of their operating branches.

Q. And the discount is allowed, if it was on a carload basis, to the main office or to the branch?

A. Well, it would be allowed on our invoice, wherever that invoice went.

Q. And whoever pays the invoice gets the discount?

A. Yes.

By Trial Examiner Purcell:

Q. Well, might I inquire at that point: If you receive an order from the main office to be shipped to a branch office, whom do you bill in that case, the main office or the branch?

A. It would depend upon the wishes of the customer, provided the branch were a recognized branch.

Q. Well, what is your general custom?

A. Pardon?

Q. Your general custom, how is it mostly done?

A. I do not know that I could specifically answer that. Did you have somebody particularly in mind, some customer?

Q. No, I know none of your customers; I am just
53 trying to get at your way of doing business so I will get it clear in my mind in order that I may intelligently follow the testimony and be prepared to rule on any objection that might be made. You see my position?

A. Yes, sir.

Trial Examiner Purcell: Very well.

The Witness: The customer placing the order with us would be billed for the salt delivered to him. Generally speaking, I believe the bill would be rendered against the main office or registered main office of that customer.

By Trial Examiner Purcell:

Q. That is what I am trying to get at. Now, for instance, if you say you received an order from the A. & P. general offices for shipment to branches C, D, and E,—

A. Yes.

Q. (Continuing.) —whom would you bill with that shipment, whom would you bill for that shipment?

A. From our experience, the A. & P. have a main office, I believe, in New York City and several district offices to facilitate their own operations. From our experience, the district offices generally place the order and upon their instructions we would bill the district office rather than the A. & P. in New York, although it would make no difference to us from an accounting standpoint whether we billed the district office in this particular example or
54 the New York office.

Q. But the point I wish to bring out is, to satisfy my mind, that you do not bill the individual stores?

A. To my knowledge, that has never occurred in this example.

Trial Examiner Purcell: All right. Pardon me, Mr. Haslett.

Mr. Haslett: That is all right, sir.

By Mr. Haslett:

Q. Mr. Peterkin, you sell your products through National Retailer-Owned Grocers' Association?

A. Do we sell?

Q. Yes, sir.

A. We do sell.

Q. And they are located in Chicago?

A. I believe the main office is located in Chicago.

Q. And do you know what type of an organization that is, sir?

A. They are, as the name would imply, a group of national retailers who either own stock or formed a corporation.

Q. That is not of your own knowledge, but that is just an opinion?

A. From my own opinion. I do not know their corporate structure.

Q. You do not know whether they have a number of units located throughout the United States?

A. They do, so far as I know.

Q. I see. And their main office is here in Chicago?

A. I believe it is.

Q. And when you bill N.R.O.G. for products shipped to any of these various branches, are they billed at the Chicago office?

A. Bills are rendered against their main office in Chicago.

Q. They are never billed at the individual outlet located in various cities throughout the United States?

A. Not to my knowledge. I believe they are all billed to Chicago.

Mr. Haslett: I think that answers your question, does it not, Mr. Examiner?

Trial Examiner Purcell: Yes.

By Mr. Haslett:

Q. I asked you this morning whether or not you allowed any rebates, discounts, or allowances, or any savings of any kind or any free goods to any of your customers, and you said "no" to that question. Then I asked you about discounts, which you have been testifying to since that time.

Now I am going to ask about rebates, whether any rebates are allowed to any of your customers or any sales made by you to such customers.

A. If I understand you correctly in the use of the
56 word "rebate", we do not allow any such rebates.

Q. What is your interpretation of the word "rebates"?

A. My interpretation would be the remittance of a sum of money in excess of any amount that would be due a customer by virtue of any published price or discount which we have in effect.

Q. You mean that would be secret?

A. Secret rebate.

Q. Well, I do not mean that at all. I mean where any payment is made by your company to a customer on a price of salt that he has in the past paid to you. Do you pay any customers sums of money every three months or every twelve months on the purchase of free running salt?

A. We occasionally pay certain customers quarterly or semi-annually a sum of money which is the aggregate of the discount due them by virtue of their having purchased from us an amount equal to or in excess of the quantity necessary to obtain any of our published discounts.

Q. I see. Is that in addition to the carload basis, unit discount on the carload basis?

A. No, it is not.

Q. That is a separate allowance?

A. That is a separate discount payment.

Q. Am I correct when I state that the payment made on a quarterly or semi-annual basis is only on free running salt or Morton's iodized salt?

57 A. The blue package, that is correct.

Q. The blue package which we have been referring to here this morning?

A. That is correct.

Q. Mr. Peterkin, is there an additional unit discount granted to any customer of Morton Salt Company over and above the regular trade discount, unit discount based on the works basis?

A. You refer to the carload discount?

Q. That is right, sir.

A. There is.

Q. And what is that discount, sir?

A. That is a unit discount paid to any purchaser of table salt grades whose purchases in any twelve consecutive months period is equal to or in excess of $50,000.

Q. Now, do such purchasers that purchase in that

amount have to purchase that amount of salt from you. your company, in order to be eligible for the additional discount?

A. If they were buying their salt from us they would have to purchase an amount equal to $50,000 annually, over any twelve consecutive months period.

Q. Well, if they bought $50,000 worth of salt from Inter-National Salt Company and $500 worth of salt a year from you would they get the additional discount over and above the carload discount?

58 A. They might or might not.

Q. What would be the governing factor there?

A. Competition.

Q. If International Salt Company were granting five per cent discount on $50,000, would you grant a five per cent additional discount over and above the regular trade discount on the carload basis on $500 worth of salt?

A. We might.

Q. Has that been done, sir?

A. Yes.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Then is it the policy of the Morton Salt Company to grant the approximate five per cent additional discount over and above the regular carload discount to any customer who is receiving a similar discount from a competitor of Morton Salt?

A. We endeavor at all times to be competitive.

Mr. Haslett: Well, you do not answer my question. Will you read the question, please, Miss Reporter?

(The question above referred to was read by the reporter.)

59 The Witness: I am afraid I cannot answer that directly the way it is worded. We do in some instances allow a discount under the conditions which you have just outlined. In other cases we may not wish to allow such a discount.

By Mr. Haslett:

Q. And the governing factor as I remember, was the competitive condition in the market, is that correct, sir?

A. Under the conditions you have outlined, yes.

Mr. Haslett: May we go off the record for a moment, your Honor?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: For the time being, Mr. Examiner, I am going to pass up the question of discounts on quantity basis, that is the $50,000 purchases of table salt, until certain information which is forthcoming will be furnished me. At that time I will be in a better position to examine this witness as to such discounts.

Trial Examiner Purcell: Very well, Mr. Haslett.

Mr. Haslett: I am going to pass over to other matters now.

Trial Examiner Purcell: You put on your case as you see fit.

Mr. Haslett: It should be put on at this particular time.

Trial Examiner Purcell: I will allow you to put it in out of sequence.

By Mr. Haslett:

Q. What sort of credit terms are extended to your customers by Morton?

A. That would depend entirely upon the type of customer.

Q. I see.

A. And his credit rating.

Q. Are the invoices payable within a specified time?

A. Generally speaking an invoice is payable in thirty days.

Q. And is there any cash discount for payment within any specified time?

A. I believe in the east there is a cash discount of one per cent for payment within ten days.

Q. Is that from the date of shipment?

A. From the date of the invoice.

Mr. Haslett: Miss Reporter, I hand you herewith a document which I ask that you mark for identification as Commission's Exhibit No. 2-A to Q.

(The document above refererd to was thereupon marked "Commission's Exhibit 2-A to Q," for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated between counsel for the Commis-

61 sion and counsel for the Respondent that the document marked for identification as Commission's Exhibit No. 2-A to Q, inclusive, is a true and correct copy of the price list of Morton Salt Company f. o. b. Michigan plant scale M-5 dated August 1, 1945, together with supplements for territory served from the Michigan plants?

Mr. McBride: I would not say served from the Michigan plants, I would say supplements to the scale which you have just described.

Mr. Haslett: It will be satisfactory for that amendment to be made. The supplements 2-B to 2-Q are supplements to the scale of salt from the Michigan plants, Scale M-5, is that correct, sir?

Mr. McBride: Supplements to the scale known as M-5.

Mr. Haslett: I see.

Mr. McBride: They may or may not be from the Michigan plant.

Mr. Haslett: I see. And it is so stipulated?

Mr. McBride: That is right.

Mr. Haslett: I wish to offer those, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: The reporter will mark them accordingly Commission's Exhibit No. 2-A to Q, in-

62 clusive, in evidence.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 2-A TO Q," was received in evidence.)

Mr. Haslett: Miss Reporter, I hand you herewith a document which I ask that you mark for identification as Commission's Exhibit No. 3-A to I, inclusive.

(The document above referred to was thereupon marked "Commission's Exhibit No. 3-A to I," for identification.)

Mr. Haslett: Mr. McBride, may we have the same stipulation as to Commission's Exhibit No. 3-A to I, inclusive, for Scale Lt-18 with its supplements?

Mr. McBride: To that scale.

Mr. Haslett: That is right.

Trial Examiner Purcell: Scale L—

Mr. Haslett: Lt-18.

Trial Examiner Purcell: And the date of it?

Mr. Haslett: The date of it is August 15th, 1941.

Trial Examiner Purcell: What was the date of the preceding one?

Mr. Haslett: August 1, 1941. I offer that, Mr. Examiner.

Trial Examiner Purcell: It will be received in evidence and the reporter will mark it as Commission's Ex-
63 hibit 3-A to I.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 3-A TO I," was received in evidence.)

Mr. Haslett: Miss Reporter, I hand you another document which I ask you to mark for identification as Commission's Exhibit No. 4-A to K, inclusive.

(The document above referred to was thereupon marked "Commission's Exhibit No. 4-A to K," for identification.)

Mr. Haslett: Mr. McBride, may we have the same stipulation as to Commission's Exhibit No. 4-A to K, as we did with Commission's Exhibit No. 2-A to Q, and Commission's Exhibit No. 3-A to I, inclusive? Scale K-1 dated August 7th, 1941, together with the supplements thereto.

Mr. McBride: To that scale; correct.

Mr. Haslett: I offer it in evidence, Mr. Examiner.

Trial Examiner Purcell: Any objection, sir?

Mr. McBride: No objection.

Trial Examiner Purcell: The papers will be received and marked by the reporter in evidence as Commission's Exhibit No. 4-A to K, inclusive.

(The document above refererd to, heretofore marked for identification "COMMISSION'S EXHIBIT 4-A TO K," was received in evidence.)

64 Mr. Haslett: I hand you a document, Miss Reporter, and ask you to mark it for identification as Commission's Exhibit No. 5-A to F, inclusive.

(The document above referred to was thereupon marked "Commission's Exhibit No. 5-A to F," for identification.)

Mr. Haslett: Mr. McBride, may we have the same stipulation as to Commission's Exhibit No. 5-A to F known as Scale T-8 dated August 15th, 1941, together with the supplements to the exhibit.

Mr. McBride: Correct.

Mr. Haslett: I offer it in evidence, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the reporter will mark them in evidence as Commission's Exhibit No. 5-A to F-1, inclusive.

(The document above referred to, heretofore marked

for identification "COMMISSION'S EXHIBIT NO. 5-A TO F," was received in evidence.)

Mr. Haslett: May we go off the record for just a moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

65 By Mr. Haslett:

Q. Mr. Peterkin, you testified this moring that you sold Morton's free running salt, round package salt, and Morton's iodized salt, which is round package salt also, 24 one pound ten ounce containers to all customers at $1.50 per case.

A. That is correct.

Q. I notice on Commission's Exhibit No. 2-A and Commission's Exhibit No. 4-A that the price of Morton's free running salt and Morton's iodized salt is $1.60 per case. Was there an increase in the price of that particular type of salt?

A. No. The reason for that apparent discrepancy is that we republished our scales, and in doing so we quoted Morton's free running and iodized in the scales at which you are now looking, at $1.60 less 10 cents, whereas we previously published the price at $1.50 net.

Q. I see, sir. And then there are some customers then that are receiving and additional discount of ten cents over and above that which is published off the $1.60 price, is that correct, sir, on a quantity basis?

A. The price is $1.50.

Q. The list price is $1.60?

A. As a practical matter.

Q. That is right.

A. All customers pay $1.50.

Q. All customers get the ten cents?

66 A. That is correct.

Q. And then there are some that get an additional ten cents?

A. That is correct, if they so qualify.

Mr. Haslett: I see, sir.

Trial Examiner Purcell: Let me ask a question off the record, please.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, is all salt sold from the Michigan plants processed in the Michigan plants?

A. No, not necessarily.

Q. You ship salt from other plants into Michigan and then sell it from that particular plant?

A. On occasion.

Q. And does that carry the Michigan freight rate or does it carry the freight rate from point of origin?

A. If I understand you correctly it carries the Michigan freight rate.

Q. The Morton Salt Company then would pay the freight from the point of origin to the Michigan plant itself, and then the customer would pay the freight from the Michigan plant to the point of destination?

A. Generally speaking we would consider our obligation to pay freight on any materials we ship to our own
67 plant for our own processing or reprocessing for reshipment.

Q. Is it not a general practice in the industry to shift salt from one plant to the other and then resell it from those various plants?

A. That I do not know.

Q. Is it the policy of the Morton Salt Company to do that, sir?

A. On some occasions we do.

Q. And what would cause such a thing to happen, sir?

A. A number of reasons. We may ship, for instance, from Manistee, Michigan, plant a certain amount of rock salt which is not obtained at Manistee in cars, that is, in mixed cars of evaporated and rock salt. The rock salt in that case would have to be imported to the Manistee, Michigan, plant from the nearest source of supply generally.

Q. Would that carry the freight rate from the Michigan plant?

A. Yes.

Q. We were talking about credit terms. Will you state briefly for the Examiner, please, Mr. Peterkin, the various types of credit terms that you grant and allow to your various customers. You stated that you sell on a thirty day basis and that in the eastern territory there is a one per cent each ten days from the date of shipment. Are
68 there any other terms of sale?

A. Well, there are cases in which we sell customers on a C. O. D. basis. We may sell them on open terms of thirty days. We may, in the east as I mentioned before, sell on the basis of one per cent ten days, although that is not our policy. We may have to revert to court action to collect our bills on occasion.

Q. Do you allow any of them six months credit?

A. We do not allow it, but unfortunately some customers are in the habit of being slow payers.

Q. Would you name the states where the one per cent ten days discount is allowed, sir?

A. I believe those states are the New England states, New York, Pennsylvania, Delaware, Maryland, District of Coumbia, and perhaps one or two others.

Q. Are any in the south?

A. What do you mean by south?

Q. Virginia, North and South Carolina, Georgia, Florida.

A. I belive it may be allowed in Virgina. I cannot state definitely. It is allowed in what is generally known as the New York field marketing area.

Q. Do you allow it to your Baltimore customers, your Maryland customers?

A. Yes.

Q. C. D. Kenney would be one of those customers?

69 A. I imagine so.

Q. Could you determine whether or not C. D. Kenney gets the one per cent ten days?

A. They would get the one per cent ten days on all purchases of salt that were shipped into that territory.

Q. Well, would they get it on the purchases of salt that would be shipped to their various branches through North and South Carolina, Georgia and Florida?

A. May I state it this way: They would get one per cent ten days discount only in such cases where we found it necessary to allow that discount to meet competitive conditions.

Q. I see.

A. The Morton Salt Company does not allow one per cent ten days discount,—

Q. As a general policy?

A. (Continuing) — as a general policy.

70 Q. Are any advertising allowances granted your customers for the promotion and sale and distribu-

tionof Morton salt through any type of customer, whether wholesaler, retailer, or consumer?

A. On some occasions we may elect to make available to a retail customer certain allowances for display of our products.

Q. Will you elaborate on that just a bit, sir, what type of allowances?

A. We know them as display allowances, I believe they are called in our organization.

Q. Is it in the form of money or is it in the form of goods?

A. No, it is in the form of money.

Q. And you pay for a particular display service?

A. We pay to a retail customer a certain amount which is set forth in an agreement which we offer to that customer for the purpose of obtaining preferential floor display space or shelf display space or window display space.

Q. Could you obtain for us, Mr. Peterkin, the names of those customers and a copy of the contract that you have with such customers?

A. I can obtain for you a copy of the contract that we offer to those customers, but I am afraid I couldn't obtain the names. It is available to everyone. I do not know who has availed themselves of the service and who hasn't.

Q. Anyone that wants to take advantage of this offer of putting forward displays of Morton's salt will be paid by your company, is that correct, sir?

A. Any retailer who agrees to perform the service that we request.

Q. Any retailer who agrees to perform that service?

A. Any retailer.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Would it be possible, Mr. Peterkins, to give us some of the names of customers that are receiving that display allowance at the present time or have received it in the past?

A. Oh, yes, I believe that would be possible.

Q. And could I also have a copy of the type of display that is being used in the various stores? If it is a stand, could we see a copy of that, sir?

A. This display allowance does not necessarily cover a display stand, but I will be glad to submit a copy of the contract, agreement.

Q. Is there any advertising along with it, sir?

72 A. This covers in detail all of the provisions that we require and all of the service that we require of the retailer.

Q. That would set forth whether any advertising is to be used in connection with the display?

A. Oh, yes.

By Trial Examiner Purcell:

Q. Do you have any photographs of typical displays?

A. I coudn't say, We may have.

By Mr. Haslett:

Q. If it is possible, I would like for you to ascertain that, sir.

A. I believe we have.

Q. If you have some—

A. If we have some, I will be glad to show it to you.

Mr. McBride: Pictures of displays?

By Mr. Haslett:

Q. Yes, pictures of displays, or any facsimiles of advertising. Has Morton Salt Company, since you have been associated with the company, given any free goods to customers?

A. No.

Q. On any occasion, sir, that you know of?

A. On no occasion that I know of.

Q. You wouldn't say they haven't, would you?

73 A. No, I wouldn't say they haven't.

Q. In what manner are the salesman paid by your company for the services that they perform in connection with the sale and distribution of your product?

A. They are paid a salary.

Q. And do they receive a commission over and above the salary?

A. No, they receive no commission.

Q. Just on a flat salary basis?

A. That is correct.

Q. And are all of them paid the same salary?

A. Oh, no.

Q. It is a varying salary?

A. It depends on their ability and length of service.

Q. I presume that you have competitors?

A. We have.

Q. Would you name some of those competitors for the record, please, sir?

A. The International Salt Company of Scranton, Pennsylvania; the Wooster Salt Company, New York City; Myles Salt Company, Limited, of New Orleans; Jefferson Island Salt Company of Louisville; Diamond Crystal Company of St. Clair, Michigan; the Carey Salt Company of Hutchinson, Kansas; the Barton Salt Company, also of Hutchinson, Kanas.

Q. Is that Barton?

74 A. Barton, B-a-r-t-o-n. The Hardy Salt Company of St. Louis, Missouri. Do you want some more?

Q. Have you ever heard of the Eastern Salt Company?

A. I have heard of the Eastern Salt Company. They are not, however, to my knowledge, producers of salt.

Q. But they sell salt in competition with you peop , is that correct, sir?

A. I presume they do.

Q. And the Independent Salt Company?

A. They are also not producers of salt as such, to my knowledge.

Q. But they do sell salt in competion with your firm?

A. I belive they still do.

Q. You mentioned the International Salt Company. Now about the International Salt Company, Incorporated?

A. By "International Salt Company," I meant International Salt Company and its subsidiaries. I am not familiar with their subsidiary arrangement or corporate structure.

Q. And practically all of these competitors that you have named sell salt in States other than the State in which the salt processed?

A. Yes.

Q. The Morton Salt Company uses common carriers in the transportation of its products does it not?

A. Yes.

75 Q. Railroads and truck transportation?

A. Railroads, trucks.

Q. Boats?

A. Boats.

Q. Do you have any competitors in addition to those that you have named who operate in sectional areas, that

is, local competitors that operate only within the State in which the product is processed?

A. There are none that I can recall who operate entirely within the State limits.

Q. You don't know of any competitors that process their salt and sell it at wholesale or retail entirely within the State of manufacture?

A. None that I know of.

76 Q. You have stated here, Mr. Peterkin, that there are two brand names for your round package salt, that is, Morton's free running salt and Morton's iodized salt. Have you any other brand names for your salt that is resold by your company?

A. Oh, yes.

Q. Would you name the other brand name, sir?

A. I cannot name all of them. We have some two hundred or two hundred and fifty different brands. For example, there is Anchor brand, Jack Rabbit brand, Triangle brand, Rock Crystal brand, Clear brand.

By Trial Examiner Purcell:

Q. You might have some literature which your company issues which would give the names of all the various brands.

A. In addition to the brands that we manufacture, and which are outlined as to the principal items in these scales which you have before you, we pack various private brands, socalled, brands under a customer's own label.

Q. I revert to my question that perhaps you have some literature which would give a list of all the brands you put out.

A. Excluding the private brands?

Q. Not the private.

A. I believe that the scales, all of the scales would just about cover the entire list.

77 By Mr. Haslett:

Q. Am I correct when I state that documents marked as Commission's Exhibits 1, 2-A to Q, 3-A to I, 4-A to K, and 5-A to F, give the names of the various brands of salt packaged and resold by your company?

A. Substantially all of them.

Q. In addition to these brands, you state that you package salt under private labels?

A. That is correct.

Q. Are those labels sold to you by the owners of the labels?

A. Generally they are purchased by us for the customer.

Q. From the customer?

A. For the customer for our use in servicing the customer.

Q. You purchase from the customer itself the labels?

A. No, we purchase the labels from the manufacturer or processor of the label, the printer.

Q. But the labels are controlled by the customer?

A. The brands are sometimes controlled by the customer.

Q. Sure Fine would be an example of that, would it not?

A. I believe so.

Q. That is a private label of N. R. O. G.?

A. I believe it is.

Q. And that is owned and controlled by N. R. O. G.?

A. That is, the brand name is.

Q. That's right, sir, and they sell you the right to use that brand name and package salt under it and resell
78 the salt to their particular members, is that correct?

A. No, they do not sell us the right to use that. They extend the privilege to us of using that brand.

Q. And you pay for the printing of the label?

A. In the same manner as we would buy any of our other labels.

Q. I think that straightens it out. Do you employ national advertising to promote the sale of your products?

A. Yes.

Q. And you have an advertising agent?

A. Yes.

Q. What type advertising is used by your company to promote the sale of Morton's free running and iodized salt?

A. Any one of the various types generally used by merchandisers that we feel best suits our particular purpose. It might be radio advertising, it might be magazines ads, billboards, that is, outdoor display billboards, or newspaper ads.

Q. Do you advertise any other brands other than the Morton's free running and Morton's iodized?

A. Yes.

Q. Your own brands?

A. Yes.

Q. Practically the same method is used for the advertising of other brands as is used for the Morton
79 brands?

A. It may be, or it may not be, as the occasion demanded.

Q. The various brands, of which you have named quite a few, are for table salt, is that correct, sir, used for table salt?

A. They could be used as table salt.

Q. You named Jack Rabbit. What type of salt is sold under the brand name of Jack Rabbit?

A. Jack Rabbit is a brand name generally applied to cotton bags of granulated evaporated salt of the type described earlier as vacuum salt.

Q. Is that used for table use?

A. It could be.

Q. What is it generally used for, sir?

A. Well, it might be used for stock feed, it could be used for tanning of leather, it could be used to process butter, it could be used for virtually all uses to which salt may ordinarily be put.

Q. I am trying to cover generally some broad outline of the brands and the type of salt sold under the brands. Now, is salt of the same grade and quality sold under other brands that are controlled by the Morton Salt Company? Strike that and I will reword it like this.

Does the Morton Salt Company sell salt of the same grade and quality under two different brand names?

80 A. It may.

Q. Has it do: it, sir?

A. Yes.

Q. And does it do it now?

A. Yes.

Q. Would you give us an example of that, sir?

A. Rock Crystal table salt and Triangle table salt are two brands used for the same grade and same quality of salt.

Q. Any other examples?

A. Jack Rabbit brand and Anchor brand are two brands used for the same quality and same type of salt.

Q. Will you tell me whether or not the examples you just mentioned, the Jack Rabbit and the Anchor, are sold at the same price?

A. They are.

Q. Are the other two—
A. Rock Crystal and Triangle?
Q. Are they sold at the same price?
A. They are.
Q. Have you any brand of salt that is of the same grade and quality as Morton's free running salt that is sold at the same prices as Morton's free running salt?
A. You are referring again to the blue package salt?
Q. That's right, sir.
A. No, that is the only type of salt that we manufacture that is packed in that particular type of package.
81 Q. And it is of a particular grade and quality?
A. That is correct.
Q. And there is no other type of salt manufactured by the Morton Salt Company of the same grade and quality sold under a different brand name?
A. That is correct.
Q. Have you any iodized salt of the same grade and quality as Morton's iodized round package salt sold under another brand name?
A. No, we sell various types of iodized salt, but the grade and quality of the iodized salt in the Morton's blue package, as you refer to it in the record, is of a particular type similar in all respects to the free running, with the exception that one is iodized and one is plain.
Q. And that is the highest grade of salt that you process, the free running and the iodized salt?
A. Of that grade of salt, yes.
Trial Examiner Purcell: We will recess for five minutes, gentlemen.
(A short recess was taken.)
Trial Examiner Purcell: The hearing will be in order.

By Mr. Haslett:

Q. Mr. Peterkin, we were talking about salt of the same grade and quality being sold under different brand
82 names. Could you give names. Could you give us a few more examples of where that is done?
A. Where these are—
Q. Where you sell salt of the same grade and quality under various brand names.
A. Clear brand and White Crystal brand.
Q. And is that sold at the same price?
A. It is.
Q. And they are sold in competition with each other?

A. Yes.

Q. That is true of the other examples you gave?

A. That is true.

Q. They are all sold in competition with each other?

A. To a very large extent. In some territories one brand may have such an overwhelming preference that we do not offer the other brand.

Q. Have you any brands where salt of the same grade and quality is sold at different prices?

A. I would prefer that the question be reworded. I am afraid I can't quite answer it.

Q. All right. I will reword it. Do you at the present time sell salt of the same grade and quality under different brand names at different prices?

A. I still am a little bit in the dark as to what you mean by that. We, for instance, sell the same grade of salt in
83 different types of packages at different prices.

Q. Of the same weight?

A. It is possible that on occasion they might be of the same weight.

Q. I think that is beginning to answer the question now, sir. Will you give us an example where salt of the same grade, quality and weight is sold under different brand names and different prices?

A. The Triangle brand, put up in square cartons of two pounds net weight is sold at one price, whereas the Star brand, which is the same type and quality of salt, put up in a two pound cotton pocket, is sold at a different price.

Q. Are they sold in competition with one another?

A. Yes.

Q. Could you give us the price of each brand?

A. If I may refer to one of those scales, I believe I can.

Q. I will hand you Commission's Exhibit No. 2-A and let you refer to that exhibit and answer the question.

(Handing document to witness.)

A. The Exhibit 2-A is a scale of prices in effect at our Michigan plants, and the f. o. b. plant price of a two pound square carton, under, for instance, the Triangle brand, is 82 cents a case of 24-two pounds. The two pound pocket in cases of 30-twos, that is 30 two pound pockets, is 98 cents per case.

84 Q. Any other examples of that type of selling?

A. The same would be true of a three pound square carton under the Triangle brand, or Rock Crystal brand.

and the three pound pocket under the Star or Triangle brand, as the case may be.

Q. What is the differential between the pocket and the package on the three pound item?

A. Per case differential?

Q. Per case differential, yes, sir.

A. The three pound square carton is 88 cents, as shown in this scale, at our plant, and the three pound pocket in 20 to a case is 89 cents.

Q. So there would be one cent differential?

A. In this case, there would be one cent differential.

Q. Do you know of your own knowledge whether that price, that differential in price, is reflected in the retail price by the retailers to the consumers?

A. Generally, it is.

Q. It is carried all the way through to the consumer?

A. It is.

Q. Do you have a particular formula for each type of salt mixed or processed by your company?

A. Salt as such is sodium chloride.

Q. That is the chemical term for it, is that correct, sir?

A. That is correct. It is a combination of chemical compound.

85 Q. Will you continue with that, sir? The mixture, free-running salt, Morton's round package free running salt, is that mixed with any other chemical?

A. Yes, we add to that salt approximately one per cent of magnesium carbonate.

Q. You don't have to give the percentage, sir, just state what is added to it.

A. Magnesium carbonate in that case.

Q. Anything else added to it, any other chemical?

A. No.

Q. And that is done pursuant to a formula in your company?

A. That is correct.

Q. And that is true as to other brands, as well as free running salt?

A. It may be.

Q. Have you any brand that contains pure salt, I mean without any mixture whatsoever?

A. Yes.

Q. And what is that brand, sir?

A. There are several. Anchor brand, for instance.

Q. Is all rock salt—
A. Evaporated salt, but with no filler.
Q. Do you have any formula for the mixture of rock crystal salt, that is salt mined?
86 A. Mined rock salt?
Q. That's right, sir.
A. Mined rock salt is generally sold without a filler, but it may be sold with a filler.
Q. And the filler would be of some other chemical added to it?
A. Generally the same chemical.
Q. I believe you specified the difference between Morton's free running and Morton's iodized salt, didn't you?
A. I believe I covered that.
Q. All of the various processing plants and the various sales offices are under the supervision of the Chicago office, is that correct, sir?
A. That is correct.
Q. Who in your organization is in charge of the advertising program?
A. Mr. Charles L. Ostrom.
Q. And he conducts the promotional advertising activities of the company throughout all the territories where the products are marketed?
A. In a general way, he supervises—
Q. He supervises the advertising campaigns?
A. Yes.
Q. What is the purpose of advertising campaigns?
A. To promote the distribution and sale of our products.
87 Q. There have been some terms used here about commercial salt. Will you tell us what you mean by commercial salt?
A. I don't recall how the term was used.
Q. Is commercial salt sold to large consumers to be used in the processing of other products?
A. Is it?
Q. Yes, sir.
A. Yes.
Q. And do you think that would be a general definition of commercial salt?
A. I would define commercial salt as any salt which we manufacture or process. All the salt that we process is commercial salt.
Q. What would you classify as table salt?

A. Table salt would be a type of commercial salt.

Q. The type of commercial salt used for human consumption?

A. Generally, yes. As the name implies, it is used primarily on the table, although it could be used for other purposes.

Q. Mr. Peterkin, is it the policy of your company to grant the carload discount to customers who are billed direct by your company, but who do not purchase on a carload basis?

Trial Examiner Purcell: Just a moment, please. Will you read that question?

88 (The question above referred to was read by the reporter.)

The Witness: What is meant by "purchase on a carload basis"?

Mr. Haslett: Will you read the question again. I think if he reads it again, Mr. Peterkin, you will get the significance of it.

(The question above referred to was re-read by the reporter.)

By Mr. Haslett:

Q. Maybe I can reword it for you, sir.

A. I would prefer if you would reword it.

Q. Do you have customers who purchase less than a carload who receive the carload discount?

A. Yes.

Q. Will you tell me that class of customers, sir?

A. A customer who purchases a quantity of salt less than that ordinarily used to make up a full car under the I. C. C. terms of a full carload, would receive the carload discount if the salt moved in a carload.

Q. If the salt was a part of a carload of salt, and that would apply to customers who purchase other than table salt, is that correct, sir, free running salt?

A. Yes, sir.

Q. Would it apply on other brands of table salt
89 other than free running and iodized salt?

A. It would not apply on free running or iodized blue package table salt as you have termed it.

Q. But it would apply on all other brands of salt, brand names of salt, is that correct, sir?

A. I believe that would cover it.

90 Q. Have you customers that purchase direct from your company who do not receive any discount whatsoever?

A. Yes.

Q. Is that a large percentage of your customers or a small percentage?

A. Very small percentage.

Q. Are you ready to state, Mr. Peterkin, that every customer that has purchased a carload of salt from the Morton Salt Company has received a carload discount?

A. Yes. Is it permissible for me to go off the record?

Trial Examiner Purcell: No, sir.

By Mr. Haslett:

Q. Right here, I think, would be a good time to clear up something on the record, Mr. Peterkin. You stated in your direct examination that your company did not give any free goods?

A. That is correct.

Q. Did you want to change that statement now, sir?

A. If in the giving of free goods, the term is used to imply a rebate, the answer is "no." We occasionally do give away salt that has become damaged, or through shipment, as not first-class merchandise. We prefer not to have that salt sold and occasionally give that to charitable institutions where it will not be sold in the regular channels.

Q. And that has happened?

91 A. That has happened.

By Trial Examiner Purcell:

Q. But you have never given it to any of your purchasing customers?

A. No.

Mr. Haslett: Mr. Reporter, I hand you herewith a document and ask that you mark it for identification as Commission's Exhibit 6-A and B.

(The document referred to was marked "Commission's Exhibit 6-A and B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say that it is stipulated by and between counsel for the Commission and counsel for the respondent that the document marked as Commission's Exhibit 6-A is a true and correct copy of an invoice of the Morton Salt Company of sales made to the National Retailer-Owned Grocers, 805 Merchandise Mart, Chicago, Illinois, known as invoice No. 78050?

Mr. McBride: That is correct.

Mr. Haslett: May I have the same stipulation as to a credit memorandum from the Morton Salt Company to the National Retailer-Owned Grocers, Inc., under date of February 22, 1937, No. 34589?

Mr. McBride: You may.

Mr. Haslett: I offer this, Mr. Examiner.

Trial Examiner Purcell: Any objection?

92 Mr. McBride: No objection.

Trial Examiner Purcell: There being none, the documents will be received and marked in evidence by the reporter as Commission's Exhibit 6-A and B.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 6-A and B", were received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you herewith a document and ask that it be marked as Commission's Exhibit for identification No. 7.

(The document referred to was marked "Commission's Exhibit 7" for identification.)

Mr. Haslett: Mr. McBride, may we have the same stipulation as to Commission's Exhibit No. 7, being an invoice under date of March 10, 1937, numbered 80423, of commodities sold to Henry Geiger & Sons?

Mr. McBride: You may.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: Hearing none, the reporter will mark the instrument in evidence as Commission's Exhibit No. 7.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 7", was
93 received in evidence.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you herewith Commission's Exhibit No. 6-A and B, and ask you to explain the discount of $14.25 at the bottom of the invoice.

(Handing documents to the witness.)

A. The figure of $14.25 is the aggregate amount of the discounts shown opposite each of these items.

Q. Each of the items on Commission's Exhibit No. 6-A?

A. That is correct.

Q. That is the type of discount that we have been talking about, known as a unit discount on a carload basis?

A. That is correct.

Q. I refer you to the words "less freight" on Commission's Exhibit No. 6-A and ask you to explain what that is, sir.

A. The item "less freight" of $98.71 on this Exhibit 6-A is apparently the amount of freight assessed on this particular weight of salt, based upon the published freight rate from the plant from which this salt was shipped to Dayton, Ohio, which is evidently the destination of the car.

Q. And the freight was paid by the Morton Salt Company?

A. The freight in this case apparently was paid by the customer, who in turn submitted a paid freight bill to substantiate the deduction.

94 Q. Where was that shipment made to, sir?

A. It was shipped, in accordance with the instructions, to the White Villa Grocers, Inc., Dayton, Ohio.

Q. And it was billed to the National Retailer-Owned Grocers here in Chicago?

A. That is correct.

Q. I will refer you to Commission's Exhibit 6-B, that is the credit memorandum: I will ask you to explain what that is, sir.

A. This is a credit memorandum issued in favor of the National Retailer-Owned Grocers, Incorporated, of Chicago, Illinois, in the amount of $12, which represents the amount due the National Retailer-Owned Grocers on account of their having obtained a quantity discount on the various items as shown, these being on table salt items.

Q. Was that credit memorandum granted on the shipment of salt to the White Villa Grocers, Inc., of Dayton, Ohio?

A. That is what is indicated.

Q. As represented by Commission's Exhibit 6-A?

A. That is correct.

Q. I hand you herewith, Mr. Peterkin, Commission's Exhibit No. 7 and ask you to state if the salt as represented and sold to the purchaser on that exhibit carried with it a discount of any sort.

(Handing document to the witness.)

95 A. The invoice indicates that a discount of one unit, termed carload discount, did apply on this particular shipment.

Q. And who was that sold to, sir?

A. That was sold to Henry Geiger & Sons of Dayton, Ohio.

Q. Do you know whether or not Henry Geiger & Sons and White Villa Grocers, Inc., are in competition with one another?

A. I do not know, but I would assume they are.

Q. And the unit discount that you have just referred to, is that what we have been talking about as a carload discount?

A. That is the unit discount shown on this exhibit?

Q. That's right.

A. That is correct.

Q. Commission's Exhibit No. 7?

A. That is correct.

Q. Were there any additional discounts granted to Henry Geiger & Sons on purchases as represented by Commission's Exhibit No. 7?

A. None that are indicated.

Q. No credit memorandum is attached to that, sir?

A. None that are indicated there.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

96 (There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that you mark it for identification as Commission's Exhibit No. 8.

(The document referred to was marked "Commission's Exhibit 8" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the Commission and counsel for the respondent that the document marked for identification as Commission's Exhibit No. 8 is a true and correct copy of invoice No. 73618, of salt sold to C. C. Hewitt of Sedalia, Ohio, and dated January the 25th, 1937?

Mr. McBride: Yes.

Mr. Haslett: I am going to offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being none, the reporter will mark the instrument Commission's Exhibit No. 8 in evidence.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 8") was received in evidence.)

97 By Mr. Haslett:

Q. Mr. Peterkin, I hand you herewith Commission's Exhibit No. 8 and ask you whether or not C. C. Hewitt of Sedalia, Ohio, is in the competitive area of Dayton, if you know, sir.

(Handing document to the witness.)

A. Of my knowledge, I wouldn't know.

Q. Does that invoice show any discount at all, sir?

A. It does not.

Q. What is that discount, sir?

A. The discount as shown on this particular invoice is the unit discount to which we have referred from time to time as being the carload discount.

Q. Does that invoice represent the purchase of a carload of salt?

A. No, it does not.

Q. It is less than a carload of salt?

A. It is less than a carload of salt.

Q. And the carload discount is granted on the purchase as represented by Commission's Exhibit No. 8?

A. That is correct.

Mr. Haslett: Mr. Reporter, I hand you another document which I ask that you mark for identification as Commission's Exhibit No. 9.

(The document referred to was marked "Commission's Exhibit 9" for identification.)

98 Mr. Haslett: Mr. McBride, can we stipulate as to Commission's Exhibit for identification No. 9, that it is a correct and true copy of an invoice numbered 82648 of commodities sold by the Morton Salt Company to the Great Atlantic & Pacific Tea Company of Toledo, Ohio, under date of March 26, 1937?

Mr. McBride: So stipulated.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being none, the reporter

will mark the instrument in question Commission's Exhibit No. 9 in evidence.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 9", was received in evidence.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you what has been received in evidence as Commission's Exhibit No. 9 and ask you to state whether the Great Atlantic & Pacific Tea Company are customers of the respondent, Morton Salt Company.

(Handing document to the witness.)

A. They are.

Q. And does Commission's Exhibit No. 9 represent a carload purchase of salt?

99 A. It does not in itself.

Q. Does it show any discount, sir?

A. None whatsoever. I beg your pardon. It does.

Q. Is that discount on a carload basis or on a quantity basis?

A. It is on a quantity basis.

Q. How much of a discount is that, sir?

A. That is at the rate of 10 cents per case on cases of 24/26 ounce Morton's iodized salt.

Q. Is that the discount that is granted to other customers of Morton Salt Company where such customers purchase salt from your company?

A. If any customer purchases at the rate of 5,000 cases per year or for a consecutive twelve months' period, he would receive from us a quantity discount of 10 cents per case.

Q. And that is what happened in this particular instance, as represented by Commission's Exhibit No. 9?

A. That is correct.

Q. I notice on the bottom of the exhibit it states "subject to published quantity discount." What does that mean, sir?

A. I imagine that that refers to the published quantity discount of 15 cents per case which is applicable to any purchaser of 50,000 cases or more in any twelve months' period, and the Atlantic & Pacific Tea Company pur-

100 chased that quantity.

Q. From you?

A. From us.

Q. From the Morton Salt Company?
A. From the Morton Salt Company.
Q. Why is it that this invoice doesn't show a 15-cent allowance or discount per case instead of a 10-cent allowance per case if the Great Atlantic & Pacific Tea Company have qualified for that particular discount?
A. It is probably a matter of their own choice for accounting practice, or something of that kind.
Q. The 5 cents per case would be granted at some later date in some other method of procedure?
A. It may be.
Trial Examiner Purcell: Off the record.
(There was a discussion off the record.)

101

Room 1123,
New Post Office Building,
Canal and Van Buren Streets,
Chicago, Illinois,
Tuesday, April 14, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., (Washington, D. C.), appearing for the Federal Trade Commission.

L. M. McBride, Esq., (310 South Michigan Avenue, Chicago, Illinois), appearing for Respondent.

102 Trial Examiner Purcell: You may proceed.
Mr. Haslett: Miss Reporter, I hand you herewith a document and ask that it be marked for identification as Commission's Exhibit No. 10.
(The document above referred to was thereupon marked "Commission's Exhibit No. 10" for identification.)
Mr. Haslett: I hand you another document and ask that it be marked Commission's Exhibit No. 11 for identification.
(The document above referred to was thereupon marked "Commission's Exhibit No. 11," for identification.)

Mr. Haslett: I hand you another document and ask that you mark it for identification as Commission's Exhibit No. 12.

103 (The document above referred to was thereupon marked "Commission's Exhibit No. 12," for identification.)

Mr. Haslett: I hand you another document and ask that you mark it for identification as Commission's Exhibit No. 13.

(The document above referred to was thereupon marked "Commission's Exhibit No. 13," for identification.)

Mr. Haslett: I hand you another document and ask that you mark it for identification as Commission's Exhibit No. 14.

(The document above referred to was thereupon marked "Commission's Exhibit No. 14," for identification.)

Mr. Haslett: I hand you another document and ask that you mark it for identification as Commission's Exhibit No. 15.

(The document above referred to was thereupon marked "Commission's Exhibit No. 15," for identification.)

Mr. Haslett: I hand you herewith two documents and ask that they be marked for identification as Commission's Exhibits Nos. 16-A and 16-B.

104 (The documents above referred to were thereupon marked "Commission's Exhibits Nos. 16-A and 16-B," for identification.)

Mr. Haslett: I hand you a document and ask that you mark it for identification as Commission's Exhibit No. 17.

(The document above referred to was thereupon marked "Commission's Exhibit No. 17," for identification.)

Mr. Haslett: I hand you a document and ask that you mark it for identification as Commission's Exhibit No. 18.

(The document above referred to was thereupon marked "Commission's Exhibit No. 18," for identification.)

Mr. Haslett: I hand you herewith another document and ask that you mark it for identification as Commission's Exhibit No. 19.

(The document above referred to was thereupon marked "Commission's Exhibit No. 19," for identification.)

Mr. Haslett: I hand you another document and ask

that you mark it for identification as Commission's Exhibit No. 20.

105 (The document above referred to was thereupon marked "Commission's Exhibit No. 20," for identification.)

Mr. Haslett: I hand you another document and ask that you mark it for identification as Commission's Exhibit No. 21.

(The document above referred to was thereupon marked "Commission's Exhibit No. 21," for identification.)

Mr. Haslett: I hand you another document and ask that you mark it for identification as Commission's Exhibit No. 22.

(The document above referred to was thereupon marked "Commission's Exhibit No. 22," for identification.)

Mr. Haslett: I hand you another document and ask that you mark it for identification as Commission's Exhibit No. 23.

(The document above referred to was thereupon marked "Commission's Exhibit No. 23," for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the Respondent and counsel for the Commission that the documents marked for identification known as Commis-

106 sion's Exhibits Nos. 10 to 16-A and B, for identification, are true and correct copies of invoices passing between Morton Salt Company and their various customers in the various locations as specified on the instruments?

Mr. McBride: That is correct.

Mr. Haslett: And that the document known as Commission's Exhibit No. 16-A and B is a true and correct copy of an invoice passing from the Morton Salt Company to the National Retailer-Owned Grocers with a credit memorandum attached thereto known as Commission's Exhibit No. 16-N, for identification?

Mr. McBride: That is correct.

Mr. Haslett: Am I also correct when I state that it is stipulated by and between counsel for the Respondent and counsel for the Commission that the documents marked for identification as Commission's Exhibits Nos. 17 through to and including Commission's Exhibit No. 23, for identification, are true and correct copies of invoices passing between Morton Salt Company and their various customers located in the various points as specified on the exhibits?

Mr. McBride: That is correct.

Mr. Haslett: I offer them, Mr. Examiner, all of the documents en bloc.

Trial Examiner Purcell: Any objections, Mr. McBride?

107 Mr. McBride: No objection.

Trial Examiner Purcell: There being no objections the documents heretofore marked for identification Commission's Exhibits Nos. 10 to 15, No. 16-A and 16-B, and 17 to 23, will be marked by the reporter with their respective numbers and are hereby admitted in evidence.

(The documents above referred to, heretofore marked for identification "COMMISSION'S EXHIBITS NOS. 10, 11, 12, 13, 14, 15, 16-A and 16-B, 17, 18, 19, 20, 21, 22, and 23," were received in evidence.)

Trial Examiner Purcell: You may proceed, sir.

DANIEL PETERKIN, JR., resumed the stand and testified further as follows:

Direct Examination by Mr. Haslett (Continued).

Q. Mr. Peterkin, during the session yesterday I asked if you would obtain for us a map showing the various geographical territories covered by each of your sales offices or branch offices. You stated on your direct examination that you had a branch office in San Francisco and one at Los Angeles, California. Do you now want to correct your testimony?

A. Yes, I should like to clarify that by stating that 108 the Los Angeles sales office is actually a sub office under the jurisdiction of San Francisco, so that San Francisco is the branch office to whom is assigned the jurisdiction of the so-called Pacific Coast territory.

Q. Now, you stated you had a branch office at New York and one at Washington, D. C. You have now refreshed your recollection, do you want to change that testimony, sir?

A. The same is true with reference to New York as is true with reference to Los Angeles. It is a sub-office under the jurisdiction of the Washington branch office.

Q. That is the Washington, D. C., office?

A. The Washington, D. C., office.

Mr. Haslett: Miss Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 24.

(The document above referred to was thereupon marked "Commission's Exhibit No. 24," for identification.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you herewith what has been marked for identification as Commission's Exhibit No. 24, and ask you to state what it is, if you know, sir?

(Handing exhibit to witness.)

A. That is an outline map of the United States on which are shown the boundaries in blue crayon of our 109 various district sales offices.

Q. Was that prepared under your supervision?

A. It was prepared at my request.

Q. I see, sir. And it is true and correct?

A. It is.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: There being no objections the map will be admitted in evidence and marked Commission's Exhibit No. 24.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 24," was received in evidence.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you Commission's Exhibit No. 10 and ask you to state whether the discount shown thereon is the carload discount that we have been referring to?

(Handing exhibit to witness.)

A. The discount shown under the discount column appears to be the carload discount, that is correct.

Q. And does Commission's Exhibit No. 10 cover a full carload of salt?

A. Yes.

Q. It does, sir?

110 A. Yes.

Q. Now, I hand you Commission's Exhibit No. 11 and ask you to state whether that covers a full carload of salt?

A. It apparently does not although the weight is marked on there.

Q. I does not cover a carload of salt?
A. It does not.
Q. Does the discount appear on the exhibit?
A. It does.
Q. Is that the carload discount?
A. It is.
Q. And is Diamond M salt a table salt?
A. No, Diamond M is the brand name for a grade of salt described previously as medium.
Q. I see, sir. Now, I notice on Commission's Exhibit No. 11 that it has 25 Blks, what does that mean?
A. That is an abbreviation for blocks.
111 Q. Of 50 pounds of Morton's iodized salt?
A. That is correct.
Q. What is that used for, sir?
A. Those are generally used for stock feeding.
Q. Is that salt of the same grade and quality as the free running salt or Morton's iodized round package salt?
A. No, it is not.
Q. Mr. Peterkin, I hand you Commission's Exhibit No. 13 and ask you whether the discounts appearing thereon are quantity discounts or carload discounts.
(Handing exhibit to the witness.)
A. Those are carload discounts, evidently.
Q. Carload discounts?
A. Yes.
Q. And I direct your attention to where it says at the bottom of the page "less quantity discount."
A. That is the quantity discount lumped to the aggregate figure of $9.50.
Q. Is that on the invoice itself?
A. That is on some items of the invoice.
Q. And C. D. Kenney Company, is that a customer of yours?
A. It is.
Q. And where is their main office located, sir?
A. Their main office is in Baltimore, Maryland.
Q. Is it a branch of the main office?
112 A. It apparently is, yes.
Q. And I direct your attention to "50 Ctrs." What does that mean, sir?
A. That is an abbreviation for the term "containers."
Q. 32 26-ounce Morton's iodized salt; net $2.00?
A. That is correct.

Q. Was that prior to the price reduction or prior to the quantity reduction?

A. It was neither. At the time this invoice was rendered on March 12, 1937, our standard pack of the Morton's free running and Morton's iodized salt referred to as the blue package, was 32 26-ounce cans to the case. It was subsequently changed to 24 26-ounce, and the price was reduced, proportionately.

Q. To $1.50?

A. To $1.50.

Q. And C. D Kenney Company is a wholesale grocer?

A. They are.

Q. And they are customers of yours that have purchased in several of the states of the United States?

A. Yes, they do.

Q. Their main office is located in Baltimore, Maryland?

A. Baltimore, Maryland.

Q. Does that invoice carry any freight reduction?

A. No. The invoice is marked "freight prepaid."

113 Q. Now I hand you Commission's Exhibit No. 14 and ask you to state whether any discounts appear thereon.

A. Yes, they do.

Q. And what type of discount is it, sir?

A. Discounts under the discount column are carload discounts.

Q. And is the E. E. Shedd Mercantile Company a customer of the Morton Salt Company?

A. It was at the time this invoice was rendered.

Q. And they are located in Columbus, Ohio?

A. Yes, sir.

Q. And that is the same jurisdiction as C. D. Kenney is located?

A. The same city.

Q. As represented by Commission's Exhibit No. 13?

A. Yes.

Q. And the discounts appearing thereon are carload discounts?

A. That is correct.

Q. Does it show any other discount?

A. No, it does not.

Q. Commission's Exhibit No. 14 represents the purchase of a full carload of salt?

A. It does not appear to be a full carload, no.

Q. And I direct your attention to the words "less freight" with the figure $84.41. Will you kindly explain why the freight appears on the invoice, as represented by Commission's Exhibit No. 14, and does not appear on Commission's Exhibit No. 13?

A. One was delivered freight prepaid; the other freight collect.

Q. Does that in any way affect the selling price?

A. No, in no way whatsoever.

Q. I direct your attention to Commission's Exhibit No. 14 where it has 50 cartons of 32 26-ounce Morton's iodized salt, net $2.00. Do you see that, sir?

A. Yes.

Q. Now I direct your attention to Commission's Exhibit No. 13 and ask if the same price appears for the 50 cartons of salt on that exhibit.

A. It does.

Q. Would the freight in any way affect the price sold to each of these customers where it is deducted and where it is prepaid?

A. No, I do not see that it would.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

115 By Mr. Haslett:

Q. Mr. Peterkin, where the freight is prepaid by Morton Salt Company, the customer pays the full face of the bill, is that correct?

A. That is correct, yes.

Q. And where the freight is collected, the customer deducts freight from the face of the invoice, is that correct?

A. That is correct.

Mr. McBride: Excuse me. Will you clarify where freight is C. O. D. rather than collect?

By Mr Haslett:

Q. Where freight is C. O. D., the customer deducts the freight from the invoice price, is that correct, sir?

A. That is correct.

Q. And then it does not in any way affect the selling price of the commodity?

A. No, in no way at all.

By Trial Examiner Purcell:

Q. Do I understand you correctly, Mr. Peterkin, that the Morton Company pays freight on all of your shipments?

A. No. On some it may pay the freight.

Q. On others—

A. On others it may not.

By Mr. Haslett:

Q. But, anyway, it does not affect the selling price of the commodity?

116 A. No.

Q. Because in all events the customer is paying the freight?

A. That is correct.

Q. So the commodities are really sold f.o.b. at point of sale?

A. One interpretation would be that, yes.

Q. I hand you Commission's Exhibit No 13 and ask you to state whether the discount that appears on this exhibit is a carload discount or a quantity discount.

(Handing exhibit to the witness.)

A. The discount is a carload discount as it appears on this invoice.

Q. And does the invoice represent the puchase of a full carload of salt?

A. No, it does not.

Mr. McBride: Was that Exhibit No. 15?

Mr. Haslett: That is right.

By Mr. Haslett:

Q. I hand you herewith Commission's Exhibit No. 16-A and B and ask you to state whether the discount which appears on the invoice marked as Commission's Exhibit No. 16-A is a carload discount.

(Handing exhibit to the witness.)

117 A. It is.

Q. Does the quantity discount appear thereon?

A. It does not.

Q. They are the quantity purchasers, are they not, sir?

A. They are.

Q. I hand you Commission's Exhibit No. 18-B and ask you to state whether the credit memorandum as repre-

sented on Commission's Exhibit No 16-B is the quantity discount allowed on Commission's Exhibit No 16-A.

(Handing exhibit to the witness.)

A. The items shown on this credit memorandum were the quantity discounts allowed at that time, yes, on the items shown.

Q. I hand you herewith Commission's Exhibit No. 17 and ask you to state whether the discounts appearing thereon are the quantity discounts or the carload discounts.

(Handing exhibit to the witness.)

A. The discounts appearing on the face of this invoice are the carload discounts.

Mr. Haslett: I want the record to clearly show when I use the terms "carload discount" and "quantity discount", I do not in any manner or form concede that the discounts are in any way justified by any saving in cost of distribution or otherwise, but I use it as a term in order to keep the record clear and straight.

118 Trial Examiner Purcell: Very well, sir.

By Mr. Haslett:

Q. Would you refer to the last two items on Commission's Exhibit No. 17 and state the price per carton of Morton's free running salt and Morton's iodized salt?

A. The price per carton as shown as gross list is $2.40.

Q. Would you kindly explain that, please, sir?

A. At the time this invoice was issued, that was our gross list price, subject to the discount as it appears in the column next to the left of that item.

Q. That is 40 cents per case?

A. That is 40 cents per case.

Q. And since that time the cartons have been reduced to 24 packages?

A. That is correct.

Q. And the price has been reduced in proportion to that?

A. That is correct.

Q. I believe I asked you yesterday, Mr. Peterkin, whether or not it was the policy of the Morton Salt Company to pay brokerage on salt sold to customers who received the quantity discounts in any form, and you stated that in some instances that had happened. Am I correct in that statement, sir?

A. I believe that is correct.

Q. But I now want to ask you whether or not it is the general policy of the company to do that, sir, or whether it is just erratically appearing once in a great while.

119 A. The general policy of our particular company is not to employ the services of brokers. We have our own sales organization and it pretty well covers the territory assigned to them, but there are instances where the services of a broker are considered to be of assistance in the distribution and sale of our products, and in those instances we may or may not employ a broker; and if we do employ a broker, he, of course, is paid our regular brokerage.

Q. And in some of those instances brokerage is paid to the broker upon the purchases of the customers receiving the quantity discounts?

A. It would make no difference whether the customer was a quantity buyer or a so-called non-quantity buyer as far as the payment of brokerage is concerned. We pay the broker for services he renders as our representative in the same manner as we would pay our salesmen a salary.

Q. But it has occurred where that has happened?

A. I imagine it has.

Q. Now, will you tell us how your company arrived at the 5 per cent discount that it allowed on a carload basis?

A. We do not allow a 5 per cent discount.

Q. Well, approximately a 5 per cent discount or on a works basis.

120 A. The amount which is termed one unit and which is the amount used by us as a carload discount happens to be approximately 5 per cent of the net works basis or the plant value of that salt.

Q. Now you can answer my question if you will tell us how you arrive at the figure.

A. It is purely an arbitrary amount.

Q. Now, would the same be true as to the additional approximate 5 per cent that is granted on the $50,000 purchase, is that an arbitrary figure, sir?

A That is also the same amount and is in the same way an arbitrary figure to some extent.

Q. Well, I would like for you to qualify that. You say "to some extent." You mean a certain portion of it is a savings on a quantity basis and the other is not?

A. No, all of it is a saving on the quantity basis, but the amount is an arbitrary amount so far as we are concerned.

Q. But at the present time you do not know just what proportion of it is a savings?

A. All of it is a saving.

Q. As far as you know, sir?

A. Yes.

By Trial Examiner Purcell:

Q. Savings to whom?

A. Savings to the Morton Salt Company.

By Mr. Haslett:

121 Q. You state, Mr. Peterkin, that all of the approximate 5 per cent additional discount over and above the carload discount granted and allowed to those customers who purchase in carload quantity is a savings and all of it is a savings. Are you basing that conclusion upon actual figures or are you basing that conclusion upon what you feel is your opinion that it is a savings, sir?

Mr. McBride: If the Examiner please, I think I might like to object to that question. It is the sphere of the respondent's defense as to the nature and manner of those savings. In due order we should like to present that to the Examiner and I believe it is slightly inappropriate to attempt to question this witness without our data present in the measure, manner, and nature of those savings.

122 Trial Examiner Purcell: I think, Mr. McBride, that the witness may be permitted to answer the question as to whether in his knowledge the saving is based on a presumption or whether it is based on actual figures. I will permit that question to be answered, but I apprehend that Mr. Haslett at this time will not attempt to go into the actual figures.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, I am not going to press that question at this time, I will withdraw it.

Trial Examiner Purcell: All right, the question is withdrawn.

By Mr. Haslett:

Q. Mr. Peterkin, then I believe you stated that both the figure of the approximate five per cent based on the works basis usually granted to customers who purchase on a carload quantity, and the figure of approximately five per cent on the carload basis to those customers who purchase in excess of $50,000 are arbitrary figures, is that correct?

A. They are arbitrary amounts.

123 Now, has your company ever allowed an allowance to customers for handling of the product out of the car to the particular customer's warehouse?

A. What type —

Q. Do you understand?

A. I do not quite understand.

Trial Examiner Purcell: Read the question.

Mr. Haslett: I will reframe the question and maybe I can get it a little clearer, sir.

By Mr. Haslett:

Q. Has it been the policy of the Morton Salt Company to allow to its various customers a one dollar allowance per car where the customers haul the salt from the railroad yard to their warehouse?

A. I have never heard of an allowance of one dollar per car for such service.

Q. Has your company ever allowed one dollar per ton freight allowance to its various customers?

A. Our freight allowance is based upon the actual freight shown in our freight rate books, which in turn is the tariff as published by the I. C. C. covering salt.

Q. Let me put it this way, I think maybe eventually we will find out just what it is. Has your company allowed one dollar per ton cartage allowance?

A. I am still not quite clear to what you refer.

124 Mr. Haslett: Now, Miss Reporter, will you read me the last question?

(The question above referred to was read by the reporter.)

By Mr. Haslett:

Q. Has it been the policy of the Morton Salt Company to pay to its customers an allowance of one dollar per ton where the customer hauls or has hauled for him the com-

modity shipped to him by Morton Salt Company from the railroad yard to the customer's particular plant or warehouse?

A. I assume that what you mean, Mr. Haslett, is the railroad yard at the destination point?

Q. That is right, sir.

A. That is, our salt on the particular order to which you refer has moved from our plant by rail —

Q. That is right, sir.

A. (Continuing) — to a given destination?

Q. That is right.

A. In that case it is our policy to make an allowance of one dollar per ton to equalize the cost differential to the customers brought about by the necessity of hauling the salt or other of our commodities from the car to his place of business in competition with the service available direct from our plant by truck, in which event store-door delivery would result.

125 Q. And is that allowance made available to any customer who purchases from you and receives his commodity by railroad shipment?

A. Wherever like conditions exist it is made available to any and every customer we may have.

Q. Then the only time that would exist would be the territory in and around a plant that is operated by Morton Salt, is that correct, sir?

A. That is substantially correct, yes.

Q. And on some occasions Morton Salt Company would transport the product from the plant to the particular customer by its own trucks, is that correct, sir?

A. That is not quite correct.

Q. Will you straighten that out, sir?

A. I assume you mean by Morton Salt Company's trucks, those owned and operated by Morton Salt Company?

Q. Yes, sir.

A. We do not offer that type of service to our customers from our plants.

Q. The products distributed from your various plants to the territories adjacent thereto are delivered then by trucks owned and operated by people other than the Morton Salt people, is that correct?

A. That is correct.

Q. How did you arrive at the figure of one dollar
126 per ton cartage basis?

A. The figure of one dollar per ton cartage allowance on our part is arbitrary. We took as a gauge for that certain allowances authorized by the Interstate Commerce Commission when similar services were offered in a particular part of this country.

Q. It is purely an arbitrary figure?

A. I do not know how the I. C. C. arrived at the allowance, but it is an arbitrary figure so far as we are concerned.

Q. You stated yesterday on direct examination, Mr. Peterkin, that you have some customers who do not receive the approximate five per cent discount on the carload basis, and those customers are purchasing less than the carload quantity. Now, I have shown you a number of exhibits this morning where purchases are made in less than the carload quantity and where the approximately five per cent discount on a carload basis is granted. Can you explain that, sir?

A. In one instance the carload discount may not apply. If a few packages of our salt are ordered by a customer and are transported to him not in a carload of salt but by local freight as a small unit, which in our business would be referred to as a strictly retail sale.

Q. I see. But it would not be transported in a regular carload of salt?

A. It would not move as part of a carload of salt.

127 Q. You have some such customers?

A. Very few.

Q. Then you grant the approximate five per cent discount on a split carload basis, that is where a group of customers combine their purchases in order to purchase a carload?

A. When a carload of salt moves from our plant as such, that is correct.

Q. And do you grant and allow this discount to each and every customer that has purchased your products on a carload basis?

A. So far as I know that is true.

Q. How long has that been in effect, sir, the granting of the carload discount?

A. That I cannot answer without referring to our records.

Q. Has it been a long time?
A. For some period.
Q. Before you came with the company?
A. I believe so.
Q. Before 1936?
A. Yes.
Q. How long have you been with the company, sir?
A. Since 1928.
Q. And it was before that time, sir?
A. To the best of my recollection that is true.

128 Q. Does the Morton Salt Company act as a sales agent for any other salt company?
A. It does.
Q. Will you name the companies for which Morton Salt Company acts as a sales agency, sir?
A. At the present time the Morton Salt Company acts as sales agent for one grade of salt produced by the International Salt Company.
Q. Any other company?
A. No.
Q. Any rock salt at all?
A. The grade to which I refer is rock salt.
Q. Is there a competitor of yours by the name of the Detroit Rock Salt Company?
A. That is correct.
Q. Has it ever in the past acted as sales agent for that company?
A. I beg your pardon?
Q. Has your company in the past acted as sales agent for the Detroit Rock Salt Company?
A. It has and does now.
Q. Is that company in any way connected with the International Salt Company?
A. It is.
Q. What is it, a subsidiary, if you know, sir?

129 A. I don't believe it is a subsidiary. It is a name applied to the operating company in Detroit. I am not familiar enough with the International structure to tell you whether it is a subsidiary or not.
Q. They process salt?
A. They mine rock salt.
Q. They mine rock salt, and that is the only instance where the Morton Salt Company acts as a sales agent for a competitor?

A. No. The Morton Salt Company also acts as a sales agent for the Avery Rock Salt Mine Company at Avery Island, Louisiana.

Q. And that is connected with the International Salt Company?

A. It is.

Q. In any other instance does it act as an agent for a salt company of any particular type of salt?

A. Not that I know of.

Q. Will you elaborate on that a little bit, tell us the services that are performed in connection with the sale and distribution of the Detroit Rock Salt Company and the Avery Salt Company for the International Salt Company?

A. Just what is meant by "services"?

Q. Well, you have testified that they act as sales agent.

A. That is correct.

130 Q. Do your salesmen solicit orders for that particular type of salt from your other customers, or from your customers?

A. We would solicit orders for Detroit Rock Salt or Avery Rock Salt in the same way as we would solicit orders for our own products and perform all of the duties expected of us as sales agents for those two mines.

Q. Does the Morton Salt process and sell salt of the same grade and quality as the Detroit Rock Salt and the Avery Rock Salt under its own brand names?

A. The two are separate types of rock salt. In one instance the Morton Salt Company does produce a grade of salt very similar to the salt produced by the International. In the other instance, it does not.

Q. Will you segregate those two instances and tell us a little more about that, sir?

A. In physical appearance, chemical properties, the salt produced at Avery Island is very similar to that produced at Grand Saline, Texas which mine is owned and operated by the Morton Salt Company.

Q. Under what brand name is the salt that is processed at the Texas plant sold?

A. That salt is under several brand names, the most common of which is probably Clear Brand.

Q. Clear Brand. And under what brand name is the

131 salt produced at Avery Island sold by the International?

A. I believe that is Avery.

A. Avery salt, and the Morton Salt Company is a sales agent for that?

A. In some territories.

Q. In some territories. Could you tell us what territories?

A. I would prefer to check back on my records. I don't recall the exact boundaries offhand.

Q. Is it in the East or in the South or the North or West?

A. It is in the central West.

Q. Central West?

A. Northern part of the central West.

Q. Does Morton Salt sell its products direct to its competitors in large quantities, to any of its competitors?

A. Just what is meant by "large quantities"?

Q. I will qualify that and eliminate large quantities. Does Morton Salt sell any of its products to its competitors?

A. It does.

Q. Would you name some of those competitors?

A. The Wooster Salt Company of New York City.

Q. What type salt is sold to the Wooster Salt Company?

A. We occasionally sell them some vacuum pan granulated salt. We may sell them other grades.

Q. Well, vacuum pan granulated salt would be table salt?

132 A. It could be used for table salt.

Q. Is that of the same grade and quality as Morton's round package free running salt?

A. It is not.

Q. Is it of the same grade and quality as Morton's round package iodized salt?

A. It is not.

Q. What other type of salt is sold to the Wooster Salt Company?

A. I believe that from time to time we have furnished them with some medium salt.

Q. Medium salt. What do you mean by "medium salt"?

A. Salt that is produced in the open type evaporating pan.

Q. That is the solar type?

A. No, as distinguished from the solar, it is produced

under artificial heat in an open type evaporating pan and is commonly known as medium salt.

Q. Have you any other competitors that you sell salt to, sir?

A. From time to time we furnish salt to others.

Q. But it is not a general policy?

A. I wouldn't call it a general policy, no.

Q. Is it a general policy to sell to the Wooster Salt Company?

A. I wouldn't say that it is, no.

133 Q. It would be sporadic?

A. That is correct.

Q. Do you sell to the Wooster Salt Company at the same prices that you sell to your customers?

A. No, we would not.

Q. Would it be a cheaper price?

A. I imagine it would be.

Q. And would that salt be repackaged by Wooster Salt Company and sold in competition with your own brand of products?

A. It might be.

Q. Can you tell us why that is done, sir, why you sell to the Wooster Salt Company?

A. Why, I would have to go pretty far back into history. The Wooster Salt Company at one time owned a plant in Michigan. At that time the Morton Salt Company was not itself a producer of salt.

Q. That was a long time ago, then, wasn't it, sir?

A. It was, in the early part of this century. The Morton Salt Company obtained its salt for merchandising through the various wells that were operated by the then existent lumber industry in the State of Michigan. As that lumber industry sawed up its wood and disposed of its wood and no longer had fuel for the operation of evaporators, as they then existed, the salt supply gradually diminished, and the Morton Salt Company looked to other sources for its supply of salt and obtained part of it

134 from the Wooster Salt Company plant, which I believe is located at Tecumseh, Michigan.

Some time later on the Wooster Salt Company had an opportunity to dispose of that plant to another corporation not engaged in the salt industry—I believe it was the National Steel Company—and had a very good figure, and by that time the Morton Salt Company had acquired, or built,

I forget which, a plant or plants of its own in order to assure itself of a supply of salt.

The Wooster Salt Company, having established a trade, a customer relationship, in Michigan and the surrounding territory, asked if the Morton Salt Company would not furnish them with salt from their plant so that they might maintain that relationship, and an agreement was worked out where this was done, where the Wooster Salt Company obtained its salt from the Morton Salt Company rather than the Morton Salt Company obtaining its product from the Wooster Salt Company.

This relationship existed for some time, and the present sale of some salt to the Wooster Salt Company is a carry-over from the previous relationship between the two corporations. Does that explain it?

Q. I think it does, sir.

Mr. McBride: May we go off the record a moment?

Trial Examiner Purcell: Off the record.

135 (There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Morton Salt Company publishes freight rates, isn't that correct, sir?

A. That is not correct as stated, no.

Q. Does it publish a reproduction of freight rates?

A. That is correct.

Q. And those freight rates are republished by your company at your own expense?

A. That is correct.

Q. And they are obtained from the Interstate Commerce Commission?

A. That is right.

136 Q. And the freight rates are identical with those published by the Interstate Commerce Commission?

A. That is correct.

Q. Would the freight rate, say in the Detroit area, apply to all salt processed in your Manistee plant or the plant operated in the Detroit area?

A. I don't quite follow you.

Q. Let me reframe the question along this line. The freight rates that are republished by the Morton Salt Company are applicable to salt produced in the particular area where the rates apply, is that true, sir? Are you still a little confused?

A. I still am a little bit confused.

Q. Let us see if I can clear it up this way, sir. You testified yesterday that on some occasions you shipped salt from one plant to another, and then you resell it from that particular plant.

A. That is correct.

Q. Now, do the freight rates that are published by Morton Salt apply to the resale of the product from the plant where it has been shipped, or from the plant in process?

A. Apply to the resale? What do you mean by that?

Q. Applied to the sale. We will strike that resale. Apply to the sale of salt from the plant where it has been shipped or the plant in process?

137 A. In what way do you mean the phrase "apply to the sale"?

Q. You publish freight rates, which you testified to.

A. That is correct.

Q. The freight rates are applicable to sales of salt from a particular area, is that correct, sir?

A. I don't understand what you mean by applicable to sale.

Q. When you make a sale from—you have a plant in Detroit?

A. We do not.

Q. Do you have one at Manistee?

A. Yes.

Q. When you make a sale from the Manistee plant to Columbus, Ohio, the freight rate from Manistee to Columbus will apply, is that correct, sir?

A. That is correct.

Q. When you ship salt from the Kansas plant into Manistee, Michigan, and then reship it from Manistee, as the result of an order, to customers in Columbus, Ohio, does the freight rate apply as to the Kansas plant or as to the Manistee plant?

A. In that case, if that condition were to exist, it would be for some reason of our own that we would supply our Manistee plant with salt produced from Hutchison, Kansas, for instance, and would be a condition that we

138 would not expect or could not expect our customer to understand or to recompensate us for the additional expense to which we were put. The freight rate from Manistee to the point of destination, that is to the point where

the customer was located, would be the freight rate used, and no other combination from our own plant located elsewhere to our own plant located in Manistee.

Q. That would not be the general rule, but an exception to the rule, if that would happen?

A. I can't quite imagine how it would happen in that particular instance, unless there was a breakdown of some kind.

By Trial Examiner Purcell:

Q. You testified to the same effect as that yesterday, did you not, Mr. Peterkin?

A. That is correct.

Trial Examiner Purcell: The same question was put to the witness yesterday.

Mr. Haslett: If I had known that, I wouldn't have reapplied the question.

Trial Examiner Purcell: I think if you will look at your record, you will find it is correct.

Mr. Haslett: Well, it has been asked now.

Trial Examiner Purcell: Yes.

Mr. Haslett: Unless you want to strike it.

139 Trial Examiner Purcell: No, let it stand.

By Mr. Haslett:

Q. You testified on yesterday, Mr. Peterkin, that your company conducted an advertising program for the promotion of the sale of its products through the various means of advertising and channels, such as newspaper, magazine, radio, billboards, is that correct, sir?

A. We would use whatever media seemed best suited to our particular purpose. Those would be among the many available to us.

Q. That would be an aggressive program?

A. We would hope it would be.

Q. Does Morton Salt Company dictate the resale prices of its product?

A. I don't see how that would be possible. It does not, to my knowledge.

Trial Examiner Purcell: Just answer the question as it is propounded.

The Witness: It does not.

By Mr. Haslett:

Q. When table salt is sold to your various customers for resale to the consumer, Morton has nothing to do with the price at which it is resold by your customers, is that correct, sir?

A. That is correct.

140 Q. Does Morton in any way advertise the resale price of its free running and iodized salt?

A. It does.

Q. You say it does?

A. It does.

Q. In what manner does it advertise that particular product?

A. The price appears in various ways, through newspaper ads sometimes, perhaps through magazine ads.

Q. Does it appear on the carton itself?

A. It does not.

Q. What is the general price advertised as to the resale of the round package blue free running salt?

A. Ten cents.

Q. Ten cents per package?

A. Ten cents per package.

Q. And the same is true as to the iodized salt?

A. That is correct.

Q. Do you know whether any of your customers are selling it for less than ten cents?

A. They are.

Q. Has your company in any way tried to maintain the resale price of its product?

A. We are constantly suggesting to our dealers that they maintain a reasonable resale price so that they
141 may in turn realize a profit on the product we offer to them for resale.

Q. And also to keep up the standards, the consumer standard of your product?

A. I don't see what bearing the price has on standard.

Q. The consumer acceptance of your product, you don't want it to get so cheap that people would think it was of an inferior grade, would you?

A. We would not.

Q. Would it be possible for you to obtain for us some tear sheets of that type of advertising where you show the retail price of the product?

A. I believe so, yes.

Q. I would appreciate that, if I could get sufficient to use as an exhibit in the Commission's case.

A. Where the price is indicated at ten cents?

Q. That's right, sir.

A. Yes.

Q. Has there been an occasion where a lower price has been requested by any of your customers for any type of salt sold by your company?

A. There have been many occasions.

Q. Have you ever complied with that request that you know of, sir?

A. Yes, we have.

142 Q. Would that be in addition to the types of quantity as alleged in the complaint against your company?

A. I beg your pardon?

Q. Would the price to which you granted, the lower price to the various customers that you have just testified you have granted, would they be in addition to the price as specified in the complaint herein?

A. I am not quite clear as to the meaning of your question.

Q. Well, I will develop it a little further. You just testified that you have been requested to furnish a lower price for salt, and that as the result of such request, you have complied with the request and have furnished salt at a lower price?

A. Yes.

Q. Will you give us the instances where that has been done, sir?

A. The name of the customer?

Q. Yes, sir.

A. I'm afraid I can't recall one offhand.

Q. Will you give us, if you can, the price which was requested and the price which Morton Salt made to that particular customer?

A. On what particular item?

Q. On any item, sir? I will let you select it.

A. I wouldn't want to hazard a guess without
143 checking some particular instance.

Q. Would the lower prices requested by these particular customers, as the result of which you have granted the prices, be in addition to the five per cent carload discount, the additional five per cent on the 50,000 purchase,

or the 10 cents on the 5,000 case purchase and 15 cents on the 50,000 case purchase?

A. I am afraid I still don't know quite how to answer the question. It is a little confusing.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, you have just testified that your company has granted, as a result of requests from some customers, lower prices on salt than is given to other of its customers. Can you state whether or not you know of your own knowledge that Morton Salt Company has sold round package free running salt to any customer at less than $1.50 a case?

A. We have to the extent of our published quantity discount.

Q. You have in extent—

A. To the extent of our published quantity discounts.

144 Q. Have you on any occasion ever sold it to a customer below the published discount bracket?

A. Not to my knowledge.

Q. Would the same be true as to the iodized salt?

A. The same would be true.

Q. Have you any brand of salt processed, packaged and sold by your company that has been sold to customers at a price lower than the price that you usually sell it to other customers for?

A. We have a published price on all of our products. That published price is sometime subject to a quantity discount, as has been explained. We are occasionally requested to lower our published price to some customers because of competitive situations, which might exist at that particular customer's place of business. We may or we may not lower our published prices on any or all of our salt, depending upon the circumstances as outlined by our customer to us, and the evidence of the lower price offered by a competitor that we may find.

Q. That has happened?

A. That has happened.

Q. When the price would be lower, would it be lowered to all customers in that particular area?

A. Not necessarily.

Q. It might be lowered to the particular customer, 145 is that correct, sir?

A. It might be.

Q. Would it be possible to find out the names of some of those customers that have requested and received lower prices, together with the background of the whole situation?

A. I presume it would be, if you could give me the name of any particular one you are interested in.

Q. A customer that would be receiving the lower price in some instances might be in competition with other of your customers, is that correct, sir?

A. With other of our customers? It is possible.

Q. And other customers might not be getting the lower prices at all, is that correct, sir?

A. They might not be.

Q. And yet they might be getting it?

A. And yet they might be.

Q. Does the Morton Salt Company have any source of income other than the profits received from the sale of salt?

A. I don't quite understand what you mean by that. Do you mean any source of income from the sale of other products?

Q. No. Other than the sale of salt? It is primarily in the business of selling salt?

A. That is correct.

Q. Processing and selling salt?

146 A. That is correct.

Q. Has it any other income, other than the profits received from the sale of salt? As an example, does it own any property for rental or lease, or does it have any other types of business other than the salt business which it operates?

A. It has.

Q. I am confining it now to the salt business, anything connected with the salt business. I don't want to know of anything that is connected other than with the salt business. If you have got property used in connection with the processing and the sale of salt from which you receive income, I am not interested in that, but any business that is foreign to the processing, manufacturing, sale and distribution of salt. Do you have any income from any such?

A. We process a small amount of chemicals.

Q. But is that used in connection with the sale of salt, the mixture of salts?

A. In part, yes.

Trial Examiner Purcell: Mr. Haslett, might I ask how far you intend to go along the present line of inquiry as to the other activities of the Morton Salt Company?

Mr. Haslett: I am through now. I am not going to ask any more questions. You mean as to the income from other sources?

147 Trial Examiner Purcell: Yes. I wanted to know just wherein it is germane to the issues here.

Mr. Haslett: I am not going to pursue it.

Trial Examiner Purcell: Of course, if you are not going to pursue it, then we will drop the subject.

Mr. Haslett: All right, sir.

By Mr. Haslett:

Q. Will you please state the number of salesmen employed by the Morton Salt Company at the present time?

A. I am afraid I can't give you the actual number without looking it up.

Q. Would it be possible to find that without a great deal of difficulty, the number of salesmen employed by Morton Salt Company during the years 1937, 1938, 1939, and 1940?

A. I believe so. I will attempt to find it out today.

Q. If it is a great deal of difficulty, I don't want you to do it, because I have asked for quite a bit of material here, and I don't want to burden you with a great deal, but I would like to have it for 1940, if you could possibly get it for that year.

A. I am quite sure I can. That is the average number for the year?

Q. Do you know how many employees are now employed by the Morton Salt Company in the production, sale, management, and distribution of salt?

148 A. That I would also have to look up for you.

Q. That wouldn't be a great deal of difficulty, would it, sir?

A. No. For what period?

Q. For 1940, sir, if you can.

A. Yes.

Mr. Halslett: I believe we did agree, Mr. McBride, that

you would have at the various hearings the sales manager in charge of the particular areas.

Mr. McBride: I suggested this, Mr. Haslett, because of the jurisdictional overlapping of the so-called sales manager and division manager, if you would indicate a rough outline of the nature of what you wish of them, I will have the proper man there who can answer your questions. Some of our men at some of these points could probably testify as to certain functions of the company, and others would be required to testify as to other functions.

Trial Examiner Purcell: Do you gentlemen wish this discussion to be on the record?

Mr. Haslett: No, it can be off the record, as far as I am concerned, sir.

May we go off the record, Mr. Examiner?

Trial Examiner Purcell: Yes. It would be well when there is a discussion between counsel to go off the record, please. Off the record.

149 (There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, can you state whether or not Morton Salt Company employs independent agents that have exclusive sale of your product in the territory served by such agent?

Mr. McBride: If the Examiner please, Mr. Haslett employed the word "agent" in one of his questions yesterday. "Agent" has a legal connotation, and I should like to have Mr. Haslett avoid in his questions any such, and to describe the function of the type of person he is referring to.

Trial Examiner Purcell: Mr. Haslett, will you kindly reframe your question, please, to meet counsel's objection?

Mr. Haslett: Yes, sir.

By Mr. Haslett:

Q. Does Morton Salt Company employ anyone who handles its product exclusive to all other types of salt?

A. It employs a number of salesmen who handle our product.

Q. No, in addition to the salesmen. Do you have any jobbers that act as your agents in soliciting orders from their competitors, say?

150 Mr. McBride: If the Examiner please, I must object to agency again, because we get a confused relationship suggested here.

Trial Examiner Purcell: I quite agree with counsel. May I suggest that the use of the term "independent contractor" might meet your objection?

Mr. McBride: That is another type of relationship. If that is the answer Mr. Haslett wishes, I would prefer it stated that way.

Trial Examiner Purcell: Does that meet with your approval, sir?

Mr. McBride: Agency and employment—

Trial Examiner Purcell: We won't go into a discussion of that because we would be here until doomsday.

Mr. Haslett: I certainly haven't any sinister meaning by the use of the term "agent", and I don't intend to use it in any manner in connection with the briefing or arguing of this case before the Commissioner that would take the respondent by surprise.

Trial Examiner Purcell: I can understand counsel's objection to that. I think that the words "independent contractor" would meet counsel's objection. Do you not think so, Mr. McBride?

Mr. McBride: It would, yes.

By Mr. Haslett:

151 Q. With the substitution of the words "independent contractor" for "agent", I will now ask you this question: Mr. Peterkin, have you any independent contractors that handle your products exclusively and solicit orders for you from any of their particular competitors?

A. I am not clear as to the meaning of the term as used. It is foreign, an independent contractor, as I understand it, is foreign to anything that we might avail—any agent or selling agent that we might avail ourselves of.

Q. Let me lay a foundation for it, then, sir, along this line: Will you name for us the various types of employees of your company that solicit orders for and sell your products to your customers?

A. We have what are known as district sales managers.

Q. What are the duties of district sales managers?

A. A district sales manager is in charge of a sales territory and generally has under his direction, under his direct supervision, one or more salesmen.

Q. Go ahead. Have you any others?

A. We have what we term carload salesmen and retail salesmen.

Q. Are they under the direction of the district sales manager?

A. They are generally under the direction of the district sales manager.

152 Q. Have you any other method or channels of distribution other than those you have just named, sir?

A. We have what we call specialty salesmen.

Q. And are they employees of your company?

A. They are.

Q. And are they under the direction of the district sales manager?

A They are not so apt to be. They probably would fall under the direct supervision of the man in charge of the specialty that they were handling.

Q. And that would be handled out of the Chicago office?

A. It might or it might not be—generally is.

Q. On occasion it might be handled out of the district office?

A. Yes.

Q. Have you any other employees or anyone connected with your company that you use as a channel or means or method of distributing and selling your products?

A. Well, all of our employees, we hope, promote the sale of our products, if that is what you mean.

Q. Do you have any customers that you use as a general distributor who solicit orders from the customers' various competitors for the sale of your products?

A. We sell our products to jobbers.

Q. Have you any jobbers who solicit orders for 153 Morton Salt to be shipped by Morton Salt to competitors of that particular jobber?

A. They make the attempt to sell the product they are handling to whomever or wherever they may.

Q. And would they sell salt to their own competitors?

A. That would be something I couldn't answer. That would be up to the jobber.

Q. You don't know whether or not the salt would be billed to the jobber or other competitor who was buying the salt?

A. Billed by the jobber to another jobber?

Q. That's right, sir.

A. That would be his own particular accounting practice.

Q. Would there be any occasion where a jobber would solicit an order for Morton Salt for your company and have your company ship the salt direct to his competitor and then bill the competitor himself?

A. There might be such an occasion, although I would not know whether the other customer you have referred to would be a competitor or not.

Q. Then there might be such an occasion?

A. Might be.

Q. Will you state the pricing policy of your company, that is, how the prices are set and fixed by your company for the various brands and grades and prices of salt? Who in your organization does that, sir?

154 A. Why, various people do that. It is a question of costs of all kinds, manufacturing costs, material costs, fuel costs, labor costs, maintenance, repair, insurance, overhead, administrative.

Q. All of those are taken into consideration in fixing the price for your product?

A. That is correct.

Q. Then after the full and complete costs are in, why, you add a certain amount for profit and then fix the price of it, is that correct?

A. We pursue that general course.

Q. Do you package any other brand of salt in a round package other than free running and iodized salt?

A. No. Free running and iodized salt are the terms used for table salt.

Q. And that is the only salt that is in a round package? Do you have any other round packages under any other brand names?

A. Oh, yes.

Q. Is the package of the same size and same dimensions?

A. It may be or it may not be.

Q. Are they sold under different brand names?

A. Yes.

Q. Would it be cheaper salt, cheaper in price, I mean?

A. Than our blue package?

155 Q. That's right.

A. I believe in all instances it is.

Q. The blue package salt, that is, the free running and

iodized salt, is the most expensive salt that you sell, is that correct, sir?

A. It is the most costly salt we have to produce.

By Trial Examiner Purcell:

Q. Well, is it the most expensive, would you say? That was the question. Your answer was not responsive.

A. Well, we sell other types and other packages of salt at a higher return. It is not, as you framed the question, the most expensive salt.

By Mr. Haslett:

Q. But is it the most expensive to the consumer?

A. There again it is not.

Q. It is not? Can you explain that a little bit, sir, so that the record will be clear?

A. We produce certain specialty items which are more expensive and sell at proportionately higher prices for the same amount of salt.

Q. Have you any round package salt that sells for more than 10 cents a package, resale, to the consumer?

A. That I do not know. I don't know what is asked for the salt on the resale.

Q. Have you any round package salt that sells 156 to your customers at more than $1.50 per case for a case of 24 packages?

A. 24/26-ounce packages?

Q. That's right.

A. No, we do not.

Q. Have you any limitation upon the volume any particular retailer must purchase before a sale is made to such a retailer?

A. Well, we don't break our standard factory cases, but, other than that, no practical limitation.

Q. Would you sell to a local retailer, grocery store, a case of Morton's free running salt, one case?

A. That would depend entirely upon conditions. If we did not have a regular representative in the form of a jobber, whose business it is to serve the retailer, we would take an order from that particular retailer.

Q. But if you do have a jobber who is handling your product in that particular territory, it is not the policy of your company to sell in competition with that jobber, is that correct, sir?

A. That is correct. We prefer to have the jobber handle the order.

Q. Are the various discounts that we have been talking about allowed to buyers who purchase salt for their own use the same as it is allowed to buyers who purchase salt for resale?

157 A. It might be so. Any buyers might consume some of the salt that he purchased.

Q. Any buyer, whether he is a consumer or user, who buys a carload of salt, usually gets the carload discount, is that correct, sir?

A. Where a carload discount applies, that is correct, yes.

Q. I will ask you to clarify that. What do you mean by where a carload discount applies?

A. Well, there are some items, as we have developed here, on which the carload discount does not apply.

Q. You did not mean by that any particular territory, geographical, territorial location?

A. I meant the item.

Q. Then any purchaser of salt who buys for his own use or consumption, who purchases $50,000 worth a year, would get the quantity discount the same as a buyer who purchases for resale, is that correct, sir?

A. Why, he would if he could consume that much salt, the items on which it applies, yes.

Q. I mean there is no classification as to customers?

A. Anybody that buys the required amount of the particular items on which the discount applies would get the discount, whether it was for resale or consumption. It makes no difference to the Morton Salt Company.

Q. Would the carload discount apply where a car
158 of salt sold to a particular customer is half of the round package free running salt and half of salt where the discount would apply? Would you give a discount on the free running salt in addition to the other salt?

A. Oh, no.

Q. You would only give it on that to which it would apply?

A. On which the carload discount applied.

By Trial Examiner Purcell:

Q. What was that particular type or brand of salt to which the carload discount did not apply?

A. Mr. Haslett has been referring to it as Morton's blue package, I believe.

Mr. Haslett: Blue package, free running, round package salt, your Honor.

Trial Examiner Purcell: The carload does not apply?

Mr. Haslett: That's right. You will recall the complaint sets forth that that does not apply.

I can stop now, sir.

Trial Examiner Purcell: In accordance with our agreement at the outset, the reporter will note that we have recessed at 12:00 o'clock, to reconvene at 2:00 p.m. in this room.

(Whereupon, at 12:00 p. m., a recess was taken until 2:00 p. m.)

159 DANIEL PETERKIN, JR., resumed the stand and testified further as follows:

Direct Examination (Continued).

Mr. Haslett: Mr. McBride, am I correct when I say that it is stipulated by and between counsel for the Respondent and counsel for the Commission that the gross sales of Morton Salt Company for the year 1936 are in excess of $5,000,000?

Mr. McBride: That is correct.

Mr. Haslett: And that the gross sales for the years 1937, 1938 and 1939 increased until the year 1940, when the gross sales were in excess of $8,000,000?

Mr. McBride: That is correct.

By Mr. Haslett:

Q. Mr. Peterkin, are you now ready to testify as to the number of employees employed by the Morton Salt Company in the manufacture, sale and distribution of its products?

A. Yes.

160 Q. Can you give us the number of employees at the present time, sir?

A. I have checked the number of employees for the year 1940, and a check of our records indicates that the average for that year was 311 salesmen actually engaged in the selling of our products exclusive of the sales managers.

Q. I see.

A. 1,534 employees engaged in the manufacturing end of the business which would include plant employees and the plant clerical staff and managers, and a total of 277 employees engaged in the administrative departments, including the clerical force in our Chicago office and the branch managers and branch clerical staff.

Q. So the total number of employees on the payroll for the year 1940 of the Morton Salt Company was approximately 2,122 employees?

A. That is correct.

Q. Do you recall, Mr. Peterkin, on yesterday we were talking about promotional and advertising allowances, that is, allowances for the floor display of Morton Salt?

A. Yes.

Q. Have you since that time had an opportunity to go into the record of Morton Salt to determine the type of contract that has been used by your company?

A. Yes, I have.

161 Mr. Haslett: Miss Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 25.

(The document above referred to was thereupon marked "Commission's Exhibit No. 25," for identification.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you a document that has been marked for identification as Commission's Exhibit No. 25 and ask you to state what that is, if you know, sir?

(Handing document to witness.)

A. This is a copy of one of our contracts entitled "Morton Floor Display Merchandising Plan Agreement between Morton Salt Company, Chicago, Illinois, the manufacturer, and any dealer."

Q. And contracts similar to Commission's Exhibit No. 25 for identification are now in force and have been in force with various customers, is that correct, sir?

A. I believe they are still in force.

Q. They have been in the past, too, sir?

A. Yes.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections, Mr. McBride?

Mr. McBride: No objection.

162 Trial Examiner Purcell: There being none the paper Morton Floor Display Merchandising Plan,

heretofore marked for identification Commission's Exhibit No. 25 will be received in evidence and so marked.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 25," was received in evidence.)

By Mr. Haslett:

Q. Mr. Peterkin, has it been made known to all of your customers that such a plan of advertising as represented by Commission's Exhibit No. 25 is available?

A. We have made known to all of our customers in the way in which this plan was used, that it would be available.

Q. Could you tell me the area where it was used, sir?

A. Roughly, the eastern part of the United States, which might be termed the New York trading area.

Q. Now, if you refer to the map that is in evidence do you think that would be of help to you, sir?

A. I think so.

Q. I hand you Commission's Exhibit No. 24 and ask you to state in just what area on Commission's Exhibit No. 24 the plan was effectuated?

A. I believe that it would include the lower portion of New York State, New Jersey, the eastern part of Pennsylvania, Maryland and Delaware, and to the best of my recollection a portion of Virginia.

163 Q. Now, the plan was made available and taken advantage of by the A. & P. Tea Company?

A. Yes, it was.

Q. And was it used in all of their stores in that area or was it just confined to particular stores within that area?

A. That I do not know.

Q. And do you know whether or not it was used in all A. & P. stores wherever they operated?

A. I do not—pardon me, in this area?

Q No, in any other area?

A. It was not.

Q. It was not?

A. No.

Q. It was confined to the area that you specified?

A. That is correct.

Mr. Haslett: Miss Reporter, I hand you three documents and ask that you mark them for identification as Commission's Exhibit No. 26-A, B and C.

(The documents above referred to were thereupon marked "Commission's Exhibit No. 26-A, B and C" for identification.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you what has been marked 164 for identification as Commission's Exhibit No. 26-A, B and C, and ask you to state what they are, if you know, sir?

(Handing exhibits to witness.)

A. I do not know what Exhibit No. 26-A is. 26-B is a duplicate copy of the Morton Floor Display Merchandising Plan Agreement between the Morton Salt Company and the A. & P. Tea Company, Chandler Building, Baltimore, Maryland.

Q. And that was executed by both companies, the officers of both companies?

A. That was executed on behalf of the A. & P. Tea Company by—

Q. You do not need to give the name. It was executed on behalf of the A. & P. And was it executed on behalf of the Morton Salt Company?

A. It was executed on behalf of the Morton Salt Company by Mr. H. W. Conn.

Q. Has it a date, sir?

A. The date is March 16th, 1942.

Q. And I will ask you to identify Commission's Exhibit No. 26-C.

A. Commission's Exhibit No. 26-C is a record executed apparently by The Great Atlantic & Pacific Tea Company of Baltimore showing what appears to be the number of cases of Morton salt delivered to each of several of their retail outlets.

165 Q. Within that area?

A. Within that area.

Q. I see.

Mr. Haslett: I think I better offer them first. I offer now Commission's Exhibit No. 26-B and C for identification.

Trial Examiner Purcell: They have been identified?

Mr. Haslett: Yes. I offer them in evidence, Commission's Exhibit No. 26-B and C.

Trial Examiner Purcell: There being no objections the papers indicated will be received in evidence and marked Commission's Exhibit No. 26-B and C.

(The documents above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 26-B and C," were received in evidence.)

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, I again hand you what has been marked for identification as Commission's Exhibit No. 26-A and ask you to state what it is, if you know, sir?

(Handing document to witness.)

A. Exhibit No. 26-A is a carbon copy of the Morton Salt Company's remittance sheet covering the sum of
166 $105.00 paid to the Great Atlantic & Pacific Tea Company of Baltimore, Maryland, in payment of the display allowance on 1,050 cases of Morton free running or iodized salt.

Mr. Haslett: I will offer Commission's Exhibit No. 26-A in evidence.

Trial Examiner Purcell: Any objection?

Mr. McBride: No.

Trial Examiner Purcell: The instrument marked heretofore for identification as Commission's Exhibit No. 26-A shall be marked in evidence as Commission's Exhibit No. 26-A.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 26-A," was received in evidence.)

By Mr. Haslett:

Q. Was the payment as represented by Commission's Exhibit No. 26-A transmitted to the A. & P. Tea Company in pursuance to the contract as represented by Commission's Exhibit No. 26-B?

A. That is correct.

Q. And the individual stores in the Baltimore area shown on Commission's Exhibit No. 26-C and showing the aggregate of 1,050 cases to the group of stores is a breakdown of the 1,050 cases as represented on Commission's Exhibit No. 26-B?

A. I would say that it is, yes.

167 Mr. Haslett: Miss Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 27.

(The document above referred to was thereupon marked "Commission's Exhibit No. 27;" for identification.)

Mr. Haslett: I hand you another document and ask that it be marked Commission's Exhibit No. 28 for identification.

(The document above referred to was thereupon marked "Commission's Exhibit No. 28," for identification.)

Mr. Haslett: I hand you another document and ask that it be marked Commission's Exhibit No. 29 for identification.

(The document above referred to was thereupon marked "Commission's Exhibit No. 29," for identification.)

Mr. Haslett: I hand you another document and ask that it be marked Commission's Exhibit No. 30 for identification.

(The document above referred to was thereupon marked "Commission's Exhibit No. 30," for identification.)

Mr. Haslett: I hand you another document and ask
168 that it be marked Commission's Exhibit No. 31 for identification.

(The document above referred to was thereupon marked "Commission's Exhibit No. 31," for identification.)

Mr. Haslett: I hand you another document and ask that it be marked Commission's Exhibit No. 32 for identification.

(The document above referred to was thereupon marked "Commission's Exhibit No. 32," for identification.)

Mr. Haslett: I hand you another document and ask that it be marked Commission's Exhibit No. 33 for identification.

(The document above referred to was thereupon marked "Commission's Exhibit No. 33," for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the Respondent and counsel for the Commission that the documents as represented by Commission's Exhibits Nos. 27, 28, 29, 30, 31, 32 and 33 for identification, are true and correct copies of tear sheets of advertising of Morton's iodized or free running salt?

Mr. McBride: That is correct. Referring there to the blue package.

169 Mr. Haslett: That is right, referring to the blue package salt.

I offer them, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being none, the various tear sheets will be admitted in evidence and numbered consecutively as heretofore introduced for identification as Exhibits Nos. 27 to 33.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 27 to 33", inclusive, were received in evidence.)

Mr. McBride: If the Examiner please, as attorney for the respondent I would like to withdraw from the record Commission's Exhibit No. 26-A, B, and C and Commission's Exhibits Nos. 27, 28, and 29 for the purpose of photostating same, thereafter substituting the photostats in lieu of the originals of the Commission's exhibit numbers named.

Trial Examiner Purcell: Does that meet with your approval, Mr. Haslett?

Mr. Haslett: That is entirely satisfactory, Mr. Examiner.

Trial Examiner Purcell: It is all right with the Examiner. Let the record so show.

Off the record.

170 (There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, I hand you herewith Commission's Exhibit No. 27 and ask you whether or not the practice of showing the retail price of the salt has been discontinued and at what time it was discontinued, if you know, sir.

(Handing exhibit to the witness.)

A. The advertising copy, as shown on Exhibit No 27, was in effect during July, 1934. I believe that it was discontinued in that year.

Q. Does the exhibit itself show a date in red pencil?

A. The exhibit itself shows the date of 1934 in red pencil.

Mr. Haslett: And I accept that that is a part of the exhibit.

By Mr. Haslett:

Q. Does Commission's Exhibit No. 38 show a red pencil date?

(Handing exhibit to the witness.)

A. Exhibit No. 28 also shows "1934" in red pencil.

Mr. Haslett: I accept that as part of the exhibit.

By Mr. Haslett:

Q. And Commission's Exhibit No. 29 shows a date?

171 (Handing exhibit to the witness.)

A. It does, 1935 marked in red pencil thereon.

Q. And do you know whether it was discontinued after that period of showing the retail price on advertising?

A. It was discontinued at some time after this date, apparently.

Q. It is not being done now, sir?

A. No, it is not being done now.

Q. And the type of advertising that is now being used is shown by Commission's Exhibits Nos. 30, 31, 32, and 33, is that correct?

A. Those exhibits represent our current advertising copy.

Mr. Haslett: Miss Reporter, I hand you two documents and ask that they be marked for identification as Commission's Exhibits Nos. 34-A and B.

(The documents referred to were marked "Commission's Exhibits 34-A and B" for identification.)

Mr. Haslett: I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 35.

(The document referred to was marked "Commission's Exhibit 35" for identification.)

Mr. Haslett: And another, and ask that it be marked Commission's Exhibit No. 36 for identification.

(The document referred to was marked "Commis-

172 sion's Exhibit 36" for identification.)

Mr. Haslett: And another, and ask that it be marked Commission's Exhibit No. 37 for identification.

(The document referred to was marked "Commission's Exhibit 37" for identification.)

Mr. Haslett: Please mark this Commission's Exhibit No. 38 for identification.

(The document referred to was marked "Commission's Exhibit 38" for identification.)

Mr. Haslett: And another, and ask that it be marked Commission's Exhibit No. 39 for identification.

(The document referred to was marked "Commission's Exhibit 39" for identification.)

Mr. Haslett: Mr. McBride, is it stipulated between counsel for the Commission and counsel for the respondent that Commission's Exhibit for identification No. 34-A and B is a true and correct copy of an invoice numbered 38787 from Morton Salt to the National Retailer-Owned Grocers' Association at Chicago, Illinois?

Mr. McBride: Correct.

Mr. Haslett: And that Commission's Exhibit No. 34-B is a true and correct copy of the credit memorandum No. 67094 to the National Retailer-Owned Grocers' Association of Chicago, Illinois?

Mr. McBride: That is correct.

173 Mr. Haslett: And it is also stipulated that Commission's Exhibit No. 35 for identification, Commission's Exhibit No. 36 for identification, No. 37 for identification, No. 38 for identification, and No. 39 for identification are true and correct copies of invoices numbered 34143, No. 34455, No. 40234, No. 32633, and No. 40181, respectively?

Mr. McBride: That is correct.

Mr. Haslett: I offer them in evidence, Mr. Examiner.

Trial Examiner Purcell: Any objections, Mr. McBride?

Mr. McBride: No objections.

Trial Examiner Purcell: There being none, the instruments offered for identification will be marked, respectively, by the reporter as Commission's Exhibits in evidence Nos. 34-A and B, 35, 36, 37, 38, and 39.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 34-A and B, 35, 36, 37, 38, and 39," were received in evidence.)

Mr. McBride: Mr. Examiner, I would like to withdraw for photostating purposes, under the arrangements indicated with respect to certain previous exhibits, Commission's Exhibit No. 34-B.

Trial Examiner Purcell: Is that agreeable with you, Mr. Haslett?

174 Mr. Haslett: Yes, that is quite satisfactory, sir.

Trial Examiner Purcell: It will be all right with the Examiner.

By Mr. Haslett:

Q. Mr. Peterkin, I hand you Commission's Exhibit No. 34-A and B and ask you to state whether the commodities as represented thereon, Commission's Exhibit No. 34-A, were shipped to a member of the National Retailer-Owned

Grocers' Association and billed to the main office here in Chicago.

(Handing exhibit to the witness.)

A. It is apparent from the invoice that that is true.

Q. You have other customers in the city of New York that are not members of the N.R.O.C., is that correct, sir?

A. Yes, we do.

Q. And you have other customers in the city of New York that are not members of the N.R.O.C. and who do not receive the additional five-percent, approximate five-percent discount over and above the regular discount granted on the carload basis?

A. We have other customers, yes, in New York who are not qualified as quantity buyers.

Q. I see. I think that answers the question, sir. I hand you Commission's Exhibit No. 35, and if you notice thereon the shipment was made to the Great Atlantic & Pacific
175 Tea Company at Columbus, Ohio. Is that correct, sir?

(Handing exhibit to the witness.)

A. That is correct.

Q. The main office of the Great Atlantic & Pacific Tea Company is New York?

A. That is correct.

Q. And you have other competitors in the city of Columbus, Ohio, that do not receive the quantity discount as do the A. & P.?

A. That is correct.

Q. I hand you Commission's Exhibit No. 36 and ask you to state, if you know, sir, whether Albers Super Markets, Inc., of Cincinnati, Ohio, received any allowance for a quantity case purchase, if you know.

(Handing exhibit to the witness.)

A. To the best of my recollection, they do qualify as quantity buyers.

Q. How would that be paid, if you know, sir?

A. I do not know exactly in this particular case.

Q. It would be paid in the form of a check either every three months, six months, or yearly basis?

A. Or perhaps by a credit memorandum.

Q. You have other customers that are purchasing Morton's free running and iodized salt in the city of Cincinnati who do not receive that allowance?

176 A. Yes.

Q. Now I ask you to refer to Commission's Exhibit

No. 37 and ask you to state whether or not any discount is shown on Commission's Exhibit No. 37.

(Handing exhibit to the witness.)

A. Yes, there is a discount shown.

Q. And that discount is taken off the invoice price, or is it taken off of the list price?

A. The discount that appears is what is termed the carload discount and is taken off the list price as shown on the invoice.

Q. Do you know whether or not Detter-Edwards & Morrison, Inc., of Charlottesville, Virginia, received any additional discount other than the one unit discount on a carload basis?

A. No, I do not.

Q. You do not know that, sir?

A. No.

Q. I refer you to Commission's Exhibit No. 38 and ask you to state whether or not Morton Salt Company have customers in Baltimore, Maryland, who sell salt in competition to the consumer with the Great Atlantic & Pacific Tea Company.

(Handing exhibit to the witness.)

A. We have other accounts in Baltimore, yes.

Q. Do you know of your own knowledge whether they sell direct to the consumer?

177 A. I imagine they do.

Q. Do you know whether or not you have customers who do not receive the quantity discount that is allowed to A. & P.?

A. The quantity discount shown on this particular exhibit?

Q. That is right, sir.

A. Yes, I believe we have other customers that would not qualify for that quantity discount.

Mr. Haslett: May we go off the record just a moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, could you testify as to the relative production of salt processed and manufactured by you as compared to the total production in the United States. Do you know that of your own knowledge, sir?

A. I would estimate it to be less than 20 percent.
Q. Less than 20 percent?
A. Yes.
Q. That is purely an estimate?
A. Purely an estimate.
Q. And based upon your own opinion and conclusions?
A. Yes, sir.

Q. Mr. Peterkin, do you have a different price list
178 for rock salt than you do for evaporated salt?

A. The prices on rock salt items are published in a different scale, yes.
Q. In a different scale?
A. Generally speaking, that is true.
Q. And by "scale", you mean a different booklet?
A. Yes.

Mr. Haslett: May we go off the record just a moment, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, at this time I am not prepared to go any further with the direct examination of this witness until certain documentary evidence which is forthcoming under the subpoena duces tecum duly served upon this witness to produce has been handed to counsel for the Commission.

Counsel concedes that the subpoena was quite a large order and not a great deal of time was given the respondent to prepare the information requested, and I personally know that counsel for the respondent has been very cooperative and has done everything within his power to facilitate the furnishing of this information, and I am now advised that most of the information, if not all, will be
179 available so that we can begin tomorrow morning at 10:00 o'clock and carry on to the conclusion of this witness, so at this time I ask for an adjournment until tomorrow morning at 10:00 o'clock in this room.

180 BEFORE THE FEDERAL TRADE COMMISSION.

Room 1123,
New Post Office Building,
Canal and Van Buren Streets,
Chicago, Illinois,
Wednesday, April 15, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq. (Washington, D. C.), appearing for the Federal Trade Commission.

L. H. McBride, Esq., (310 South Michigan Avenue, Chicago, Illinois), appearing for Respondent.

181 Mr. Haslett: May we go off the record just a moment, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, at this time, with your permission and with the permission of counsel for the Respondent, I would like to interrupt the direct testimony of Mr. Peterkin and call as the Commission's witness Mr. D'Miller.

Will you come around, Mr. D'Miller, and be sworn, please?

Trial Examiner Purcell: Any objection, Mr. McBride?

Mr. McBride: No objection.

WILLIAM M. D'MILLER was thereupon called as a witness for the Commission and, having been first
182 duly sworn, testified as follows:

Direct Examination

By Mr. Haslett:

Q. Mr. D'Miller, will you state your full name for the record?

A. William M. D'Miller.

Q. Are you here in response to a subpoena duly served upon you by the Federal Trade Commission?

A. I am.

Q. Do you reside in Chicago, Illinois?

A. For the past two years.

Q. What business are you engaged in, sir?

A. I am president of the National Retailer-Owned Grocers, Incorporated.

Q. Where is that organization located, sir?

A. The headquarters is 805 Merchandise Mart Building with branch offices in San Francisco and New York.

Q. And 805 Merchandise Mart is in Chicago, Illinois?

A. Yes, sir.

Q. What is the business of the National Retailer-Owned Grocers Association?

A. Buying and selling of merchandise.

Q. Will you give us a little historical background of the organization, as to what it comprises, the type of members, and the number of members, if you can recall, sir?

183 A. Now it is six years old, it will be seven years old this coming June, 1942. It is composed of retailer-owned houses all over the United States. It is necessary that the warehouse be 75 per cent owned by active retailer-owned grocers in order to be eligible for membership in the National Association. We have 18,917 individual retail grocers that own 116 retailer-owned warehouses distributed in 42 states of the Union.

Q. Mr. D'Miller, the warehouses that you speak of, are they wholesale grocery houses?

A. All of them.

Q. All of them, and do they sell groceries to other people other than their members?

A. A few do, but at least 85 per cent do not sell to anyone except their own members; who have stock in that particular company. In other words, the retailer becomes his own wholesaler.

Q. And the instances where they do sell to competitors of their own members, that is about 15 per cent?

A. That is rough, I am guessing at that.

Mr. McBride: Pardon me, if the Examiner please. I think I will object to that question. The witness answered that they might sell to other retailers. Mr. Haslett framed the question, "In the instances where they sell to competitors," which is something entirely different from the answer of the witness.

184 Mr. Haslett: I will withdraw the question, Mr. Examiner, and reframe it.

Trial Examiner Purcell: Question withdrawn.

By Mr. Haslett:

Q. Mr. D'Miller, you have testified that in some instances the wholesalers who are owned by the various retailers in the various geographical sections of the country sell groceries and allied products at wholesale to other retailers, retailers other than the members of the N. R. O. G., is that correct, sir?

A. I think some of them do, but they are very much in the minority if they do.

Q. I believe you stated about 15 per cent?

A. That was a guess on my part, sir.

Q. Are the retailers that purchase products from the wholesaler member of N. R. O. G. in competition with retailers who are members of N. R. O. G.?

Mr. McBride: If the Examiner please, I will object to that unless Mr. Haslett specifies particular instances. Competition is a broad generality that the witness can hardly be able to answer.

Trial Examiner Purcell: Let's give Mr. Haslett an opportunity, Mr. McBride, to develop his testimony. He has to start somewhere.

185 Mr. McBride: I appreciate that.

Trial Examiner Purcell: Then if you are still of the mind that you want to urge your objection, why, I will consider it.

Mr. McBride: May I note an exception, then?

Trial Examiner Purcell: Exception granted.

Mr. McBride: Thank you.

Trial Examiner Purcell: I might say to you, incidentally, that an exception is automatically granted without the necessity of asking for it.

Mr. McBride: Whatever is your practice.

Trial Examiner Purcell: I announced that at the outset of the case.

By Mr. Haslett:

Q. Can you answer that question or would you like to have it re-read?

A. I would like to have it re-read.

Mr. Haslett: Will you re-read the question, Mr. Reporter, please?

(The question above referred to was read by the reporter.)

The Witness: I don't understand the question.

By Mr. Haslett:

Q. You testified that in about 15 per cent of the total membership of N. R. O. G., groceries and allied products are sold by the wholesale houses to independent re-
186 tailers not members of the N. R. O. G.?

A. That's right.

Q. Will you tell, if you know, sir, whether or not these independent retailers are in competition with members of N. R. O. G. that purchase from the particular warehouses?

A. They are doing business in the same city and town and, therefore, they would be a competitor.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 40.

(The document above referred to was thereupon marked "Commission's Exhibit No. 40," for identification.)

By Mr. Haslett:

Q. Mr. D'Miller, I hand you a document which has been marked for identification as Commission's Exhibit No. 40, and ask you to state what it is, if you know, sir?

(Handing document to witness.)

A. This is the members of the National Retailer-Owned Grocers, Incorporated, giving the location and the manager.

Q. Is that a late edition of the membership list?

A. About two months old.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections?
187 Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the list will be marked by the reporter as Commission's Exhibit No. 40 in evidence.

(The document above referred to, heretofore marked for identification, "COMMISSION'S EXHIBIT NO. 40," was received in evidence.)

By Mr. Haslett:

Q. I again hand you Commission's Exhibit No. 40, Mr. D'Miller, and ask you to state whether or not that is a complete list, if you know, sir, of all members?

(Handing document to witness.)

A. That I don't know.

Q. Have you any members located in Atlanta, Georgia, sir?

A. One. It is so marked on here.

Q. What is the name of that? Is it the Atlanta Savings Store?

A. The Atlanta Savings Store, right here. (Indicating.)

Q. Have you any located in Ashville, North Carolina?

A. One in Asheville.

Q. What is the name of that, sir?

A. Mutual Distributing Company, Asheville, North Carolina.

Q. Mr. D'Miller, do any members of the N. R. O. G. purchase salt from the Morton Salt Company?

A. Some. That is, if one of their salesmen would be making up a car in that neighborhood, or doing mis-
188 sionary work around there, in making up a car, they may give him the order. Otherwise, they come straight in to our Chicago office or the New York office.

Q. Does the main office of the N. R. O. G., located in the Merchandise Mart, place orders with the Morton Salt Company for salt to be shipped to its various members?

A. We do, yes, sir.

Q. Would you tell us the method, manner and procedure, employed by the National Retailer-Owned Grocers Association from its main office in placing those orders with Morton Salt Company?

A. We have conference meetings every thirty days, and we divide those up into eight conferences, which cover the entire United States, and that is when we sell merchandise, and then is when we promote the sale of certain merchandise. Then, in turn, if any order comes in, that is handed to us, we execute it through the office, and send it to the company specified.

189 Q. Is the main office of the N. R. O. G. billed by Morton Salt Company for salt shipped to its various members, to N. R. O. G.'s various members?

A. We buy the salt in our name and pay for it and are invoiced for same.

Q. Do you know whether or not you have any single member of N. R. O. G. who purchases salt in excess of $50,000 worth per year, table salt?

A. That I couldn't answer, unless I would check it. I

know we have some large enough to do it. If they placed the salt business all with one company, they could easily do it.

Q. Do you purchase all your salt from one company?

A. No, sir.

Q. Do you know whether or not the Atlanta Savings Store purchases $50,000 worth of salt a year, sir?

A. I would not know.

Q. Do you know whether the Atlanta Savings Store purchases 50,000 cases of free running salt per year?

A. I wouldn't know.

Q. Does your company get any special discounts from Morton Salt Company on its purchases?

A. Nothing more than on a quantity purchase, which anybody who can purchase that amount is entitled to.

Q. What would that discount be, if you know, sir?

A. Roughly, around 5 per cent.

190 Q. Approximately 5 per cent. And that is over and above the discount granted on a carload basis?

A. The discount is simply a banking process, does not go into the cost of the merchandise.

Q. Will you elaborate on that just a bit, sir, and tell us what you mean by a banking process?

A. Well, you take something that is 1 per cent 10 days, then if you have the money as a manager of the warehouse, you would make the 1 per cent; and if you don't, some have to go out and borrow it and some have to skip it, and, therefore, we term it a banking process. If you have that money, you get the 1 per cent. Otherwise, you don't discount your bill.

Q. We weren't talking about 1 per cent 10 days. I am talking about 5 percent.

A. What is your question again?

Mr. Haslett: Will the reporter read the former question where I asked about the 5 percent over and above the regular discount granted on the carload basis?

(The question above referred to was read by the reporter.)

A. That 5 per cent is above the cash discount, nothing else.

Q. Do you know whether or not you receive a discount on a carload basis, that is, if you purchase a full car

191 do you receive any special discount from them, sir?

A. No, sir.

Q. Not that you know of?

A. Not that I know of. I would say no.

Q. Does the N. R. O. G. receive any special discount or allowance on Morton's free running or Morton's iodized salt?

A. There is a differential as to private label and their label on free salt, but that I figured in with the 5 per cent overall. That is nothing additional.

Q. There is testimony in the record that a discount of 10 cents per case is allowed to those purchasers who purchase 5,000 cases of free running salt per year. Do you know whether or not N. R. O. G. receives that 10 cents allowance per case?

A. That I could not answer.

Q. N. R. O. G. purchases more than 5,000 cases of free running salt a year?

A. Yes, sir.

Q. Far in excess of that, sir?

A. Yes, sir.

Q. Does N. R. O. G. in any way promote the sale and advertise the Morton free running salt?

A. Yes, sir.

Q. It does, sir?

A. Yes, sir.

192 Q. And does it receive any compensation from Morton Salt Company for that service?

A. No, sir.

Q. They do not?

A. No, sir.

Q. Would you tell us the type of advertising or promotional activity that is employed by the N. R. O. G. to promote the sale of Morton Salt Company's products?

A. Once every 30 days we hold a meeting of conference 6 in Chicago. That is composed of managers of retailer-owned houses, members of the national organization, taking in Kentucky, Ohio, Illinois, Michigan, Wisconsin and Minnesota. At these meetings we get up and explain promotions we are going to put on. Every so often we will take Morton salt as a stand-out that we are going to display, feature and sell.

And then conference No. 7 meets in Kansas City. That is once every 30 days, and that takes in Missouri, Kansas, Oklahoma, Colorado, and several other states. We do the same thing then.

This coming Saturday and Sunday, I will go East. We have a meeting of conferences 1, 2, 3, 4, and 9. No. 1 takes in all of New England; No. 2 takes in western New York; No. 3 takes in metropolitan New York; No. 4 takes in all of Pennsylvania, Delaware, Maryland, and Washington; and No. 9 takes in the Potomac section, which is Baltimore.

Q. And that same procedure—

193 A. That goes through every 30 days, we have our set promotional programs, and every so often Morton gets the limelight on this deal, for which we render no bill and get nothing for it.

Q. And that same procedure is followed all over the United States?

A. That same procedure is followed all over the United States.

Then we go to the coast, too. So that within 10 days I can have made every member and we are all ready to go to work on a set program.

Q. And Morton is receiving no more than any other particular brand because he just takes his turn in the line of advertising along with other brands of products of wholesale grocers, the same as any other type of commodity?

A. They get the spotlight every so often in a year's time.

Q. Which is just a series of spots on particular commodities?

A. That's right.

Q. I notice that Mutual Distributing Company of 347 Depot Street, Asheville, North Carolina, is listed as a member of yours. Will you state whether or not the Mutual Distributing Company is a wholesaler or is a retailer?

A. Wholesaler.

194 Q. And it is owned by retailer members?

A. Owned by individual retail grocers, who own their own stores.

Q. In and around—

A. In and around Asheville.

Q. Do you know whether or not the Mutual Distributing Company sell groceries and allied products to—

A. Outsiders?

Q. —outsiders?

A. I wouldn't know.

Q. The manager of the Mutual Distributing Company would know that, wouldn't he?

A. That's right. If in any case one of our houses would sell a competitive retailer, they would not be sold at the same price a stockholder is sold.

Q. It would be at a different price?

A. Higher price.

Q. At a higher price?

A. That's right.

Q. Does National Retailer-Owned Grocers receive any compensation from Morton Salt Company to promote the sale of Morton's products?

A. No, sir.

Q. All bills of the various members are paid through the Chicago office?

195 A. Yes, sir.

Q. And all invoices are received from the various sources of supply at the Chicago office?

A. Yes, sir.

Mr. Haslett: I think that's all. Cross-examine?

Cross-Examination by Mr. McBride.

Q. Mr. D'Miller, I have only one or two questions. You stated that approximately, as nearly as you could recall, your warehouses might make sales of perhaps up to 15 per cent to persons other than the retail members of a given wholesale house. So far as you know, Mr. D'Miller, the outsiders to whom those sales are made might or might not be in competition with your own members, is that correct?

A. That's right.

Q. And it is conceivable, is it not, Mr. D'Miller, that outsider A, for example, even if he were in the same area as one of your members, might be competitive in one line that your warehouse handles, and not another line, is that correct?

A. That's right.

Q. So without having a given name of an outsider and a given name of your retail outlet in a particular city or area and checking the history of those two purchasers, you wouldn't know whether they were competitive in a particular line or particular quality of goods in a given line?

196 A. I would not. The rule is, when they sell an outsider, it is simply showing the benefits if they even-

tually become a member of that distributing unit; and if, after a certain length of time, they don't join up, they buy no more goods from this particular warehouse.

Q. So, really, it is a promotional inducement?

A. Yes.

Q. When you do sell outsiders?

A. That's right, sir.

Mr. McBride: That's all.

Mr. Haslett: No further questions. Thank you very much for coming over, Mr. D'Miller.

(Witness excused.)

Mr. Haslett: May we have a few moments off the record, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Peterkin.

Trial Examiner Purcell: Let the record show Mr. Peterkin resumes the stand on direct examination by the Commission's attorney.

197 DANIEL PETERKIN, JR., was thereupon recalled as a witness for the Commission and, having been previously duly sworn, testified as follows:

Direct Examination (Continued).

By Mr. Haslett:

Q. Mr. Peterkin, in your direct examination the first day of the hearing, on page 16 of the record, I asked this question:

"What are the duties of the salesmen?"

And your answer was: "The solicitation of orders from all classes of trade within their sales territories; the promotional and merchandising work that we hope they do in connection with the distribution and sale of our salt." Will you tell us the type of promotional and merchandising work done by your salesmen, that you hope is done by your salesmen, as you stated?

A. The type of work done by the salesmen would include, among the other duties, the distribution and display of such advertising matter as we may furnish the salesman, any educational work which he may be able to do

with customers, that is, educational work in the sense of promoting our products above other salt companies' products, and in some instances solicitation of orders from retailers not directly for our account.

Q. When you say "educational work", is that in
198 connection with the sale of salt to the retailer by the wholesaler, or is it in connection with the sale of salt from the retailer to the consumer?

A. I had more particularly in mind the sale of our salt from the retailer to the consumer.

Q. And what type of educational work would that be, sir? Could you give us an example of what would go on?

A. Yes, I believe so. Our particular salt, in the blue package, that is, is very evenly screened, and we believe has more free running qualities than our competitors, and we attempt to have our representative point that out to the retailer.

Q. It is to point out the good qualities of Morton's above those of competitors?

A. What we believe to be the better qualities.

Q. Yesterday, Mr. Peterkin, or the day before, I don't remember just which, you testified that if a competitor of yours was selling salt of the same grade, quality, and size, at a price 2 cents lower than the price at which your salt was selling, that that would affect your business.

Now, I am going to ask you whether a 1-cent differential in price would in any way affect your business.

A. You are still referring to the price on the blue package?

Q. That's right, sir, on the blue package salt.

199 A. I believe I stated that it might affect our business. It may not.

Q. Would it affect it on any other type of salt, other than the blue package salt?

A. To a very much greater extent, yes.

Q. Would a cent differential in price be of some effect on the other brands of salt, other than the blue package salt, a 1-cent differential?

A. I should like to have you clarify that. You mean 1-cent differential in the price of the package from the retailer to the consumer, or—

Q. That's right, from the retailer to the consumer.

A. I am afraid I wouldn't have the experience to answer that.

Q. Let us take it from the processor to the wholesaler, then. Would that in any way affect your business, where your competitor was selling salt of the same grade and quality at a cent lower than the price at which you were selling salt of that same grade, quality, and weight?

A. There again you refer to the per package or the manufacturer's case?

Q. Per package.

A. Well, we don't sell our products by packages to a jobber.

Q. You have so many packages to a case, don't you, sir?

200 A. That is correct.

Q. A 1-cent differential on a package of salt would amount to about 24 cents per case, would it not?

A. Depending upon—

Q. How many packages in a case?

A. How many packages in a case, yes.

Q. Do you know whether or not that would in any way affect your business, 1 cent per package?

A. On what particular item?

Q. Any item other than the free running, blue label salt.

A. It might.

Q. Could you say definitely it does or it does not?

A. Not the way you frame the question. It would depend entirely upon the type of package and the type of salt to which you refer.

Q. Let's see if we can frame it a little clearer, sir. Do you sell a package of salt that resells to the consumer at 5 cents per package, what is known as 5-cent salt?

A. There is none to my knowledge. There is a type of salt on the market which is generally referred to as a five-cent salt.

Q. Do you sell any of that, sir?

A. We sell a similar package.

Q. And it resells to the consumer at 5 cents per package?

A. It may or it may not.

201 Q. Do you know the price of that per case, of the 5-cent salt per case to the wholesaler?

A. Our price to the wholesaler?

Q. Yes.

A. I couldn't tell you without referring to our price list.

Q. If I hand you Commission's Exhibit No. 4, could you tell us, after referring to Commission's Exhibit No. 4? (Handing document to the witness.)

A. The package of salt that is generally referred to in the trade and among the industry as a 5-cent package is the item shown in this scale which is marked "K-1" as 36 one-pound 8-ounce square carton, and our price as shown f.o.b. the plant is $1.03 per case.

Q. $1.03 per case?

A. That's correct.

Q. And then the freight, of course, would be added to that?

A. This particular item is a blanket price item, as we term it; that is, it is delivered at all points at the same price.

Q. And is that $1.03 per case?

A. That is $1.03 per case.

Q. I will ask you this question: If a competitor of yours were selling salt of the same grade, quality, and
202 size as the 5-cent salt which we referred to as $1.03 per case, to one of your customers at $1.02 per case, would that in any way affect your business?

A. It might.

203 Q. You won't say definitely that it does not affect your business?

A. I beg your pardon.

Q. You wouldn't say that it would not affect your business?

A. No, I wouldn't say that.

Mr. Haslett: May we go off the record, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, on page 43 of the record, I asked if you would furnish us with a list showing the price at the present time of each commodity sold by your company and the flat unit discount granted on such an item based upon a carload basis.

Will you straighten that out, please, sir, just a bit? Is the unit discount on the price list?

A. The unit discount appears on the last page, which in this particular scale, K-1, is page 20, under the heading "Carload discount."

Q. And the same would be true, except as to the exact page number, on each of the price lists as represented by the various Commission's exhibits?

A. Yes.

204 Q. It would be near the last of the book and would show the unit discounts for each type of salt, is that correct, sir?

A. That is correct.

Q. Mr. Peterkin, I asked you whether or not it would be possible to give us the names of the customers that were receiving display allowances at the present time, and you said that it would be possible, and that you would give us, also, a copy of the type of the display, the type that is being used in the various stores.

Have you been able to check on that as yet, sir?

A. I believe you asked for a photograph.

Q. Photograph, yes.

A. As I recall it.

Q. Did you find any?

Mr. McBride: May we be off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, I asked you on page 88 of the record: "Do you have customers who purchase less than a carload who receive the carload discount?"

And your answer was "Yes."

I said, "Will you tell me that class of customers, sir?"

205 And your answer was, "A customer who purchases a quantity of salt less than that ordinarily used to make up a full car under the I. C. C. terms of a full carload, would receive the carload discount if the salt moved in a carload."

You don't mean to give the impression that you are required by the I. C. C. to give a carload discount to all customers who don't purchase on the carload basis?

A Oh, no.

Q. On page 100 of the record, Mr. Peterkin, I asked you: "Why is it that this invoice"—referring to Commission's Exhibit No. 9—"doesn't show a 15-cent allowance or discount per case instead of a 10-cent allowance per

case if The Great Atlantic & Pacific Tea Company have qualified for that particular discount?"

And you answered:

"It is probably a matter of their own choice for accounting practice, or something of that kind."

Then the question:

"The five cents per case would be granted at some later date in some other method of procedure?"

And you said:

"It may be."

Can you clarify that, sir? Instead of "it may be," tell us how it is done, sir?

206 A. I believe I can to a large extent. The Great Atlantic & Pacific Tea Company asked if we could, and be consistent with our accounting practice, allow on the face of their invoice 10 cents of the 15 cents discount to which they were entitled, and remit to them, as I recall it, every quarter the five cents still unpaid as a portion of their earned discount.

Q. And that remittance is in the form of a check?

A. I believe it is.

Q. Do you know whether or not it is sent to the main office of The Great Atlantic & Pacific Tea Company in New York?

A. As I recall it, that was their instruction.

By Trial Examiner Purcell:

Q. How long has that practice been in force, Mr. Peterkin?

A. Which practice?

Q. The practice you have just described, how long has that been in vogue between the two companies?

A. The method of payment of the discount?

Q. That's right.

A. For several years.

By Mr. Haslett:

Q. Had it been in effect prior to the time that you became president of the company?

207 A. Yes.

Q. And was it in effect at the time you became associated with the company, if you know, sir?

A. No, I don't believe it was.

Q. It has been since you have become associated with Morton Salt that that price list was put into effect?

A. I believe I am safe in saying so, yes.

Q. But you are sure it has been in effect for the past several years?

A. Yes.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

208 Trial Examiner Purcell: You may continue.

By Mr. Haslett:

Q. Mr. Peterkin, I believe that you testified that in addition to the carload discount that we have been talking about, you do allow additional discounts to customers who purchase salt during a twelve consecutive months period in excess of $50,000, is that correct, sir?

A. $50,000 or more, that is correct.

Q. I say in excess of $50,000.

A. Correct.

Q. And what is that discount?

A. That is a unit of discount.

Q. And does it amount to approximately five per cent on the invoice price?

A. No, it does not. Approximately five per cent of the net plant price.

Q. And that would be approximately five per cent of the net works basis price?

A. That is correct.

Q. And do you require that a customer, in order to be eligible for this additional discount over and above the carload discount, purchase $50,000 or more of salt from you, from your company?

A. That is substantially correct, yes.

Q. Have you any customers who do not purchase
209 $50,000 worth of salt in a twelve consecutive months period from the Morton Salt Company who receive the additional discount?

A. I believe we have.

Q. Can you state the reason why that is done, sir?

A. On any particular account, do you have one in mind?

Q. Yes, will you take Thomas & Howard?

A. The Thomas & Howard Company were purchasing to the best of our knowledge the bulk of their salt from the International Salt Company. The International Salt Company, we learned, were allowing a discount in accordance

with their regular practice. We were offered the opportunity to serve some of Thomas & Howard branches with our our salt, but in order to sell them our products that were of the same general character as the International products it was necessary for us to meet the International price as we saw it, and in that case we allowed what we term the quantity discount.

Q. That is the additional discount over and above the carload discount?

A. That is correct.

Q. And do you know whether or not any of the socalled branches of Thomas & Howard purchase from any of your competitors $50,000 worth of salt per year, any single branch?

A. I would not know that, no.

Q. Do you know the corporate setup of Thomas & Howard at all, sir?

210. A. No, I am afraid I do not.

Q. You do not know whether they are separate corporations or whether they are branches of one corporation?

A. To my knowledge Thomas & Howard is the firm name, they are not two firms.

Q. You do not know whether they are several firms or one firm under the name of Thomas & Howard?

A. No. I do not.

Mr. Haslett: Miss Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 41.

(The document above referred to was thereupon marked "Commission's Exhibit No 41," for identification.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you herewith what has been marked for identification as Commission's Exhibit No. 41 and ask you to state what that document is, if you know, sir?

(Handing exhibit to witness.)

A. This paper contains a list of purchasers receiving the discount of 15 cents per case on Morton's blue package table salt, and also a list of purchasers receiving a unit discount in addition to the carload discount.

Q. And was that prepared by the Morton Salt Company?

A. It was.

211 Q. And was it prepared in compliance with the subpoena duces tecum duly served upon you as president of the Morton Salt Company?

A. It was prepared at my request.

Q. And do you, of your own knowledge, know that the names that appear thereon are accurate?

A. They are.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections, Mr. McBride?

Mr. McBride: No objections.

Trial Examiner Purcell: There being no objection the list marked for identification Commission's Exhibit No. 41 will be received and marked in evidence as such.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 41," was received in evidence.)

By Mr. Haslett:

Q. I again hand you Commission's Exhibit No. 41, Mr. Peterkin, and ask you to state whether the purchasers receiving the unit discount in addition to the carload discount, whose names appear thereon purchase in excess from your company of $50,000 worth of salt during a twelve consecutive months period?

(Handing exhibit to witness.)

212 A. I believe most of them do. I notice Thomas & Howard's name appears hereon. We have just discussed that.

Q. Now would you take the Creasy Corporation of Louisville, Kentucky, do you know whether or not they purchase more than $50,000 from your company per year?

A. I belive they do.

Q. How about Grocers Wholesale Company of Huntington, is that a branch of Creasy?

A. That is a branch of Creasey.

Q. And the Merchants Wholesale Grocer?

A. That is also a branch of Creasey.

Q. So any purchases made by those two firms would be included in the purchases of the Creasey Company, is that correct?

A. So far as our records are concerned it is.

Q. How about the Frankfort Grocery Company of Philadelphia, Pennsylvania, do they purchase in excess of $50,000 worth of Morton salt?

A. I believe they do.

Q. And C. D. Kenny Company of Baltimore, Maryland?

A. They do.

Q. Do you know whether C. D. Kenny have branches throughout the South?

A. They have a number of branches, I am not positive as to their location.

213 You do not know whether any single branch purchases that much, do you?

A. No, I do not.

Q. Now, Kroger Grocery Company of Cincinnati, Ohio, do they purchase in excess of $50,000 from the Morton Salt Company?

A. I believe they do.

Q. How about Model Grocery Company of Springfield, Missouri?

A. Model Grocery Company is a branch of the Kroger Grocery Company.

Q. You know that of your own knowledge?

A. Yes, sir.

Q. And N. R. O. G. we have had testimony here this morning about?

A. Yes.

Q. That they do purchase from you in excess of $50,000?

A. They do.

Trial Examiner Purcell: $50,000?

Mr. Haslett: $50,000 per year.

By Mr. Haslett:

Q. Thomas & Howard Company we have been talking about, sir?

A. Yes.

Q. I note Timberlake Grocery Company of Thomasville, Georgia, is that a branch of Thomas & Howard?

214 A. It is.

Q. You know that of your own knowledge, sir?

A. That is what I have been told.

Q. And the Christiansburg Canning Company of Pulaski, Virginia.

A. They are also a branch of Thomas & Howard.

Q. As far as you know?

A. As far as I know.

Q. What about the Wholesale Grocers Sales Company

of Philadephia, Pennsylvania, is that a purchasing organization or a wholesale grocery company?

A. I believe that is wholesale grocery. I am not familiar with their activity.

Q. You do not know whether it is a cooperative group or not?

A. No, I do not.

Q. And that comprises all customers that get an additional discount from Morton Salt Company on purchases of $50,000 or more during a twelve consecutive months period?

A. I believe that is a complete list.

Trial Examiner Purcell: Did you wish to add something to your last answer, Mr. Peterkin?

The Witness: May I go off the record, or will you ask, Mr. McBride?

Mr. McBride: Will you permit the witness to go off
215 the record, Mr. Examiner? Maybe he can straighten out some point he has overlooked.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Am I correct when I state, Mr. Peterkin, that the only customer that you have knowledge of who purchased less than $50,000 worth of salt during a twelve consecutive months period from Morton Salt Company but who received the additional discount is Thomas & Howard Company.

A. That is the only one that occurs to me at the moment, yes.

Q. What method or means was employed by your company in obtaining the name of Thomas & Howard in order to grant that company such a discount? How did that information come to you, sir?

A. As I recall it, it came from the Thomas & Howard Company.

Q. They advised you themselves that they were purchasing in excess of $50,000 worth of salt from the International Salt Company?

A. They advised us, as I recall the circumstances, that our price was not attractive.

Q. And you asked them why?

216 A. We did.

Q. And as a result of that question you got the information?

A. That is correct.

Q. You do not know of your own knowledge whether any single branch of any of the corporations named on Commission's Exhibit No. 41 that we have been talking about, beginning with the Creasey Corporation, purchased in excess of $50,000 worth of salt from Morton Salt Company per year?

A. No. I do not. They may and they may not.

Q. Mr. Peterkin, what method or manner is used by your company in paying the additional five per cent, approximate five per cent discount to those customers who purchase in excess of $50,000 or who purchase $50,000 worth of salt from all sources per year, how is that paid, sir, is it taken off the invoice or is it paid in the form of a check, the additional discount?

A. The additional discount in that case is most generally shown on our invoice and is taken in the form of a deduction by the customer when paying that invoice, although it may be paid, if the customer should request it, by check, or by credit memorandum.

Q. Do you have some customers that are paid in the form of check?

A. None that I can think of.

217 Q. And all of the customers that appear on Commission's Exhibit No. 41 are paid by credit memorandum?

A. No. I believe in all instances the quantity discount is shown on the face of the invoice as rendered.

Mr. McBride: May I go off the record, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. The questions that I did propound to you, Mr. Peterkin, related to the customers who received a unit discount in addition to the carload discount, did you understand me?

A. That is the way I understood your question.

Q. That is correct, sir. And that had particular reference to Commission's Exhibit No. 41.

A. To the letter portion of that exhibit, yes.

Q. That is right, to the last portion of it.

A. That is correct.

Q. Does your company grant a discount of 10 cents per case to customers who purchase 5,000 cases of free running salt during a twelve consecutive months period?

A. We do.

Q. And to any customer who purchases that amount you give him 10 cents per case?

218 A. That is correct.

Q. And how is that paid, sir?

A. That may be paid by check, voucher, that is. It may be paid by credit memorandum.

Mr. Haslett: Mr. Examiner, may we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Now, Mr. Peterkin, does your company grant this 10 cents allowance per case to customers who do not purchase in excess of 5,000 cases of free running salt during a twelve consecutive months period?

A. Not to my knowledge.

Q. Have you, to your knowledge, ever granted such an allowance to customers whose purchases do not exceed 5,000 cases per year?

A. No, I do not believe so.

Q. Has there ever been an occasion which you know of, sir, where the customer has been granted an extra month in order to make his purchase to be eligible for the 5,000 case purchase and the 10 cents allowance?

A. That would be most unusual.

219 Q. You would not say it has not happened, would you, sir?

A. No, I would not.

Q. Is it the policy of your company to grant the 10-cent allowance per case to customers who purchase an aggregate of 5,000 cases from all sources?

A. I do not believe I understand that question.

Q. Well, let me reframe it, sir. Is it the policy of the Morton Salt Company to grant a 10-cent allowance per case on all purchases of salt from the Morton Salt Company

where the customer making such purchase does not purchase 5,000 cases of salt from the Morton Salt Company but does purchase from all sources of supply 5,000 cases of free running salt a year?

A. That would be an impossible situation as you have stated it.

Mr. Haslett: I think you misunderstood my question.

Trial Examiner Purcell: Let the reporter read the question to the witness. It seems to me it is perfectly clear.

(The question above referred to was read by the reporter.)

Trial Examiner Purcell: Is that clear to you?

The Witness: The question as stated is clear, but the situation as described is an impossible one.

220 By Mr. Haslett:

Q. Well, it is impossible for the fact that you are confusing when I say "free running", that I mean Morton's free running?

A. That is what I had in mind; Morton Salt Company is the only salt company that I know of that puts out Morton's free running and iodized salt.

Q. What I mean to convey, Mr. Peterkin, is where he purchases 5,000 cases of table salt from all sources of supply but does not purchase all of it from the Morton Salt Company.

A. The Morton Salt Company allows a discount of 10 cents per case to any buyer who purchases in any twelve consecutive months' period 5,000 cases or more of its advertised Morton's free running or iodized salt in the, as you describe it, blue package.

Q. But it does not grant that on the same basis that it would grant 5 percent additional discount on the $50,000 basis where Thomas & Howard situation—where he might purchase $50,000 worth of salt from International and only purchase a small amount from the Morton Salt Company?

A. There is no connection at all between the two types of discount.

Trial Examiner Purcell: By "connection" you mean analogy?

The Witness: Analogy.

221 By Mr. Haslett:

Q. As far as you know and to the best of your knowledge and ability to answer, do you know whether any

other company, a competitor of Morton Salt Company, have the same type of discount as the 10-cent, 5,000 case purchase for twelve consecutive months' period?

A. I do not know.

Q. If they did, you would probably know, would you not, sir?

A. It is possible I would, yes.

Q. Now, does the Morton Salt Company grant any other case discount to any other of its customers other than the 10 cents per case allowance?

A. Yes. The Morton Salt Company allows a discount of 15 cents per case to buyers of Morton's free running and iodized salt whose total purchases in any twelve consecutive months' period amount to 50,000 cases or more.

Q. 50,000 cases of free running salt per year?

A. Of Morton's free running or iodized salt.

Q. That is a twelve consecutive months' period?

A. That is correct.

Q. And is not a calendar year?

A. No.

Q. It might start in May and go to the end of April; it might start in July and go to the end of June, is that correct, sir?

222 A. It would be a twelve consecutive months' period, that is correct.

Q. And you say 15 cents per case allowance is made by Morton Salt Company to some customers that do purchase in that amount?

A. We have that as part of our price structure, that is correct.

Q. Now I hand you Commission's Exhibit No. 41 and ask you to state whether that document contains the names of Morton Salt Company's customers who receive the 15-cent allowance.

(Handing document to the witness.)

A. It does.

Q. And they are listed at the top of the page?

A. That is correct.

Q. Would you read the names, please, sir, so we will be very sure.

A. They are listed as American Stores Company, Philadelphia, Pennsylvania; Great Atlantic & Pacific Tea Company, New York, New York, and branches; National Tea Company, Chicago, Illinois; Safeway Stores, Inc., Oakland, California.

Q. I notice that you say the Great Atlantic & Pacific Tea Company, New York, New York, and branches. You do not mean by that that the American Stores, National Tea Company, and Safeway Stores do not have branches?

A. No, I do not.

223 Q. They all have branches?

A. I presume they all do.

Q. Does the American Stores Company purchase from the Morton Salt Company 50,000 cases of free running or iodized salt per year?

A. Yes, I believe they do.

Q. And is the same true as to the Great Atlantic & Pacific Tea Company?

A. Yes.

Q. And the National Tea Company?

A. So far as I know, that is true.

Q. And Safeway Stores, Inc.?

A. Yes.

Q. The American Stores is an organization operating retail grocery stores throughout the East that sell direct to the consumer?

A. I believe that is so.

Q. Do you know of your own knowledge?

A. No, I do not.

Q. The Great Atlantic & Pacific Tea Company is a retail chain outfit, isn't it, sir?

A. It is.

Q. And they have a number of stores all over the United States.

224 A. I believe they cover the United States.

Q. And the National Tea Company is the same type of outfit, that is, a chain retail grocery store?

A. Yes, I believe they are.

Q. They operate in Chicago and Minnesota and Wisconsin, this section of the country?

A. I am not sure. I think they are fairly well localized in the Chicago general area.

Q. Safeway Stores, Inc., a national organization, have branches throughout the entire United States?

A. I do not know.

Q. Do you have any customer who is receiving the discount of 15 cents per case on Morton's blue package table salt that does not purchase from Morton Salt Company 50,000 cases during a twelve consecutive months' period?

A. None that I can recall offhand.

Mr. Haslett: Miss Reporter, I hand you herewith four documents and ask that they be marked for identification as Commission's Exhibits No. 42-A, B, C, and D.

(The documents referred to were marked "Commission's Exhibits 42-A, B, C, and D" for identification.)

By Mr. Haslett:

Q. Now, Mr. Peterkin, I hand you what has been marked for identification as Commission's Exhibits Nos. 42-A, B, C, and D and ask you to state what that is, if you know, sir.

(Handing exhibits to the witness.)

A. This exhibit is a list of purchasers receiving discount of 10 percent per case on Morton's free running and iodized blue package table salt.

Q. Was that prepared under your supervision and at your direction?

A. It was prepared at my request.

Q. And it was prepared in the office of the Morton Salt Company?

A. That is correct.

Q. And it is true and accurate, as far as you know, sir?

A. That is correct.

Mr. Haslett: I offer it.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: There being no objections, the reporter will mark the list of purchasers produced by the witness and heretofore marked as Commission's Exhibits Nos. 42-A, B, C, and D, for identification, now admitted in evidence.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS NOS. 42-A, B, C, AND D", were received in evidence.)

226 Mr. McBride: Mr. Examiner, I wonder if I could request Mr. Haslett to indicate that is also in response to the subpoena *duces tecum*?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, Commission's Exhibit No. 42-A, B, C, and D was furnished in response to a subpoena duces tecum duly served upon you by the Federal Trade Commission, was it not, sir?

A. That is correct.

Q. Are you prepared to testify, Mr. Peterkin, that each and every name appearing on Commission's Exhibit No. 42-A, B, C, and D purchased from you Morton's blue package salt in excess of 5,000 cases for a twelve consecutive months' period?

A. I believe in all instances those customers purchased 5,000 cases or more.

Q. During a twelve consecutive months' period?

A. During a twelve consecutive months' period, yes.

Q. You do not know whether the customers whose names appear on Commission's Exhibit 42-A, B, C, and D have branches or have several units in addition to the main purchasing office?

227 A. No, I do not.

Q. Mr. Peterkin, do you, of your own knowledge, know whether or not any salt sold to customers that appear on Commission's Exhibit No. 42-A, B, C, and D was shipped direct to competitors of such customers and billed to the names who appear on here, or whether the orders for such Morton's blue package table salt were transmitted by such customers and handled as their own purchases?

A. I am afraid I have lost the trend of that question.

Mr. Haslett: Well, it was rather involved, and I will try to reword it, sir.

Trial Examiner Purcell: Do you wish to withdraw it?

Mr. Haslett: Yes, just withdraw that question, Miss Reporter.

By Mr. Haslett:

Q. Do any of the customers named on Commission's Exhibit No. 42-A, B, C, and D act as your distributors for Morton's salt to their competitors? Do you know?

A. I do not know.

Q. Has there been an occasion where you would ship salt to a particular customer and bill his competitor for it?

A. We would ship our salt in accordance with the instructions given us at the time any customer ordered it.

Q. So if a customer ordered salt to be shipped to a
228 competitor and billed to him, that would be done?

A. Billed to whom?

Q. To the customer.

A. We would ship our salt in accordance with any instructions consistent with our business.

Mr. Haslett: May we go off the record just a moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Miss Reporter, I hand you three documents and ask that they be marked for identification as Commission's Exhibit No. 43-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 43-A, B, and C" for identification.).

By Mr. Haslett:

Q. Mr. Peterkin, I hand you what has been marked for identification as Commission's Exhibit No. 43-A, B, and C and ask you to state what it is, if you know, sir.

(Handing exhibit to the witness.)

A. These exhibits are a list of customers of ours at various locations, showing the number of cases of Morton's free running and iodized purchased in each calendar year from 1936 to 1941, inclusive.

Q. And that was prepared under your direction and
229 supervision and request?

A. It was prepared at my request.

Q. By competent members of your staff?

A. That is correct.

Q. And is it true and accurate, the figures that appear thereon are true and accurate as far as you know, sir?

A. They are.

Q. And that was prepared and submitted in compliance with the subpoena duces tecum duly served upon you by the Federal Trade Commission?

A. It was.

Mr. Haslett: I offer it in evidence, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: Hearing none, the papers heretofore marked for identification Commission's Exhibit No. 43-A, B, and C will be received and marked as such in evidence.

(The documents referred to, heretofore marked for iden-

lification "COMMISSION'S EXHIBIT 43-A, B, AND C", were received in evidence.)

Mr. McBride: Mr. Examiner, I should like to request, inasmuch as those are work sheets, the privilege of withdrawing and substituting photostats on Commission's
230 Exhibit No. 43-A, B, and C.

Trial Examiner Purcell: Any objection?

Mr. Haslett: No objection whatsoever.

Trial Examiner Purcell: Do you wish to substitute the photostats for the original?

Mr. McBride: Yes, if agreeable with the Examiner.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record. I will consent to that.

By Mr. Haslett:

Q. The figures contained thereon, Mr. Peterkin, represent the sales through main purchasing office of each customer whose name appears on Commission's Exhibit No. 43-A, B, and C, is that correct, sir?

A. I presume it is. The figures represent the aggregate sales for each of the years given to the customer of ours whose name appears hereon.

Q. You do not know whether or not those customers have branches?

A. No, I do not.

Q. Branch warehouses and branch sales offices?

A. They may.

Q. Do you know of your own knowledge what Colonial Stores, Inc., is, what kind of an organization it is?

A. No, I am afraid I do not.

231 Q. You do not know where they are located, even, sir?

A. They are located somewhere in the East.

Mr. Haslett: Miss Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 44.

(The document above referred to was thereupon marked "Commission's Exhibit No. 44," for identification.)

By Mr. Haslett:

Q. Mr. Peterkin, I hand you what has been marked for identification as Commission's Exhibit No. 44 and ask you to state what that is, if you know, sir?

(Handing exhibit to witness.)

A. This is a tabulation of sales to the Safeway Stores, Incorporated, for the years 1937, 1938, 1939, 1940 and 1941, showing no tabulation for any year except 1941.

Q. Was that prepared in the office of the Morton Salt Company here in Chicago?

A. Yes, it was.

Q. Prepared at your request?

A. It was.

Q. And are you ready to testify that the figures contained thereon are true and correct according to the books and records of the Morton Salt Company?

A. They are.

232 Q. Was it prepared in compliance with the subpoena duces tecum duly served upon you by the Federal Trade Commission?

A. It was.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: There being no objection the paper will be received in evidence and marked by the reporter as Commission's Exhibit No. 44.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 44, was received in evidence.)

By Mr. Haslett:

Q. I believe you stated, Mr. Peterkin, that the years 1937, 1938, 1939 and 1940 were blank years, that no figures appear thereon for those particular years, is that correct, sir?

A. That is correct.

Q. And they only appear for 1941?

A. That is correct.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

233 By Mr. Hazlett:

Q. Mr. Peterkin, I hand you Commission's Exhibit No. 44 and ask you to state whether the Chicago office during the year 1941, the Chicago office of the Safeway Stores, Inc., purchased 50,000 cases of free running salt?

A. Would you restate that question?

Q. I say will you state whether or not the Chicago office of the Safeway Stores, Inc., purchased 50,000 cases of free running salt during the year 1941, the Chicago office?

A. As shown on this exhibit?

Q. As shown on this exhibit.

A. No.

Q. It did not?

Mr. McBride: Mr. Examiner, may I go off the record just a moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, you will note on Commission's Exhibit No. 44 that the territories named thereunder, Chicago, Kansas City, Dallas, Pacific Coast, are they branch offices of the Safeway Stores, Inc.?

A. No, that does not represent the list of their branch offices.

234 Q. Are they branch offices of the Morton Salt Company?

A. They are not exactly branch offices. The Pacific Coast territory is a sales territory. We have branch offices at Chicago, Kansas City and Dallas.

Q. And Pacific Coast would be San Francisco?

A. And Los Angeles.

Q. And so that your answer to my question previously put, that none of the branch offices of Safeway Stores purchased in excess of 50,000 cases per year is not a correct statement?

A. It is not from this statement, no.

Q. And you now want to change your testimony?

A. I should like to.

Q. Are you prepared to testify whether or not any single Safeway unit purchased 50,000 cases of free running salt per year during a twelve consecutive months period from the Morton Salt Company?

A. I am not prepared to say whether they did or not.

Mr. Haslett: Miss Reporter, I hand you two documents and ask that they be marked for identification as Commission's Exhibit No. 45-A and B.

(The documents above referred to were thereupon

marked "Commission's Exhibit No. 45-A and B," for identification.)

235 By Mr. Haslett:

Q. Mr. Peterkin, I hand you what has been marked for identification as Commission's Exhibit No. 45-A and B, and ask you to state what that is, if you know, sir?

(Handing documents to witness.)

A. This is a recap of purchases of the C. D. Kenny Company from the Morton Salt Company for the years 1936, 1937, 1938, 1939 and 1940.

Q. Was that prepared at your request?

A. Yes, it was.

Q. And it was prepared in the office of the Morton Salt Company by competent employees?

A. It was.

Q. And are the figures contained thereon true and correct, sir?

A. They are.

Q. According to the books and records of the Morton Salt Company?

A. That is correct.

Q. And was it prepared in accordance with the subpoena duces tecum duly served upon you by the Federal Trade Commission?

A. It was.

Q. As president of the Morton Salt Company?

A. Yes.

236 Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the papers offered will be received in evidence and marked by the reporter as Commission's Exhibit No. 45-A and B.

(The documents above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 45-A AND B," were received in evidence.)

By Mr. Haslett:

Q. In order that the record may be clear, Mr. Peterkin, I am going to now hand you again Commission's Exhibit No. 45-A and B and ask you to state under the column 32-36 what the figures mean thereon?

(Handing exhibit to witness.)

A. The figures under that column are the figures representing the purchases by C. D. Kenny Company for the months and the years shown of Morton's free running and iodized salt when packed in 32 26-ounce cases. That is 32 packages.

Q. And that type of carton has now been discontinued?

A. That type of pack has been changed to 24-26.

Q. And where it appears on the exhibit 24-26 it means 24 26-ounce packages of Morton's free running salt?

A. That is correct.

Q. And the figures contained thereon for the various months and the various years, that is on Commission's Exhibit No. 45-A and B, are the aggregate purchases of salt by all of C. D. Kenny's branches from the Morton Salt Company?

A. That is correct.

Q. It is not broken down as to the separate purchases by each branch?

A. No, it is not.

Q. I will ask you to explain the various headings on Commission's Exhibit No. 45-A and B, just what they mean, sir.

A. The first heading is the date and there is shown thereunder the year and then a breakdown of each month, and the total of the year's purchases.

The second column is a column headed 32-26, and we have already discussed that.

Q. Yes.

A. The next heading is number of packages.

Q. Is that packages of round package salt?

A. Packages as indicated here are containers of 24 26-ounce cartons. The next column is value. That is the invoiced value of the packages shown.

Q. And would be in dollars and cents?

A. And would be in dollars and cents. The next column is headed "Table" and that is the value of table salt of all types also expressed in dollars and cents.

Q. I see.

A. The next column headed "Balance" is the value in dollars and cents of all other grades of salt sold to C. D. Kenny Company for the years and months indicated.

Q. Other than table salt?

A. Other than table salt. The total is, as indicated, the total value of all the purchases in dollars and cents.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Mr. Examiner, I should like to withdraw Commission's Exhibit No. 44 and Commission's Exhibit No. 45-A and B for purposes of substituting photostats for reasons indicated with respect to Commission's Exhibit No. 43-A, B and C.

Mr. Haslett: I have no objection, Mr. Examiner.

Trial Examiner Purcell: It is so ordered.

Mr. Haslett: Mr. Examiner, it is now 12:20 and I think it would be a good time to stop in accordance with our previously arranged schedule, in order that these gentlemen may take care of some other business. I ask for an adjournment at this time.

Trial Examiner Purcell: We will now adjourn at 12:20 and reconvene at 2:00 o'clock.

(Whereupon at 12:20 p. m. a recess was taken until 2:00 p.m.)

239 DANIEL PETERKIN, JR., resumed the stand and testified further as follows:

Direct Examination (Continued.)

By Mr. Haslett:

Q. Mr. Peterkin, does your company, the Morton Salt Company, afford promotional services and facilities to jobbers who purchase 5,000 cases of free running salt during a twelve consecutive months' period?

A. We perform for those jobbers all services available to any jobber in the way of promotional and merchandising assistance.

Q. But they don't get any particular service that a jobber who doesn't purchase in that amount would get?

A. No, they do not.

Q. There would be no difference in the services performed?

A. No difference whatsover.

Q. Does Morton Salt Company perform any promotional services for customers who purchase 50,000 cases of

salt per year during a twelve consecutive months' period?

240 A. The corporation or companies or organizations capable of purchasing that quantity have, from our experience, developed a merchandising organization of their own which is active in the promotion of all products which those corporations or organizations handle, including the Morton's salt that they purchase from us, to such an extent that any work that we might do for them would be merely duplication, and ordinarily we do not perform—we are not called upon to perform the same merchandising and promotional work for an organization of that caliber as we would for the others.

Q. That is the ones that purchase over 50,000 cases per year?

A. That's right.

Q. So am I correct when I state that for all customers purchasing less than 50,000 cases per year, you do perform certain promotional services and facilities, and for those who purchase more than 50,000 cases a year no services and facilities are performed?

A. That is substantially correct, yes.

Q. Does your company furnish advertising display services to customers that purchase 5,000 cases of free running salt during a twelve consecutive months' period?

A. I don't quite understand what you mean by "display services."

Q. Well, a counter display such as we have been
241 talking about in the eastern territory. Is that confined only to customers of less than 5,000 or do the customers that purchase 5,000 cases of free running salt during a twelve consecutive months' period receive the same display and advertising allowance?

A. All of our customers would receive the same type of promotional assistance, which would include any display material that we furnish our own salesman, or advertising matter that we might furnish our own salesmen, with the exception of those in the category of which we were just speaking a moment ago.

Q. That is the 50,000-case purchasers?

A. Yes. They may not require or permit that same type of assistance.

Q. And am I correct when I state that customers pur-

chasing less than 50,000 cases of free running salt per year in the territories where promotional display allowances are given receive or know about the display allowance and take advantage of it, and those who purchase more than 50,000 cases a year do not receive such an allowance?

A. I am a little confused by your use of the "display allowance." We have been talking now about display material, such as counter displays or other advertising matter that we furnish our own salesmen.

Q. I will let you straighten it out, sir.

242 A. I would prefer if you could give me some idea of what you mean by "display allowance."

Q. We were talking this morning about a certain section of the country, namely, in the eastern section, where certain allowances were paid to customers that furnished display facilities.

Now, I am wondering and I want to know, sir, whether or not the display allowance is granted to all customers that purchase less than 50,000 cases of Morton's free running salt during a twelve consecutive months' period.

A. I understand you now to be referring to the merchandising plan, of which a copy of the contract covering that plan has already been made a part of the record.

Q. That's right, sir.

A. The plan is available to all customers, both the 50,000-case buyer and the 5,000-case buyer, or the one or two-case buyer.

Q. I think that answers the question.

Trial Examiner Purcell: The question was, in addition to that, Mr. Haslett, do they know about it.

The Witness: Do the 50,000-case buyers know of this display?

By Trial Examiner Purcell:

Q. Do all of them, the one case to the 50,000, do they know about the custom or the policy of the Morton Salt

243 Company to make these allowances for display?

A. Yes, they do. We have made every effort to advise them of it.

Q. What efforts have you made?

A. Presented the plan to them, described it to them, attempted to get them to utilize it, and in some cases with some success.

By Mr. Haslett:

Q. And any advertising displays used by Morton Salt Company through these various customers would be in connection with that allowance that we have been talking about?

A. No, it would not.

Q. Let's straighten that out, sir. Does Morton Salt Company make available any advertising displays to its various customers?

A. We make available advertising matter in the form of display material, such as dummy cartons, counter display stands, window display material. Those are all made available to our salesmen, who in turn use every effort to get our customers to utilize that material to our own advantage.

Q. That is used in connection with the promotion of the sale of your products?

A. That is correct.

Q. And is that material made available to all customers purchasing Morton's salt?

244 A. That material is made available to our salesmen by our company for their use in promoting the sale and distribution of our Morton's free running, iodized, and other products as we from time to time push.

Q. It is up to the salesman to see that it gets on the customers' counters and in the customers' windows?

A. That is correct. It is up to our salesman to make the best possible use of the material at hand.

Q. And it is not handled direct from the office in Chicago to the customer, but is handled through the medium of the salesman?

A. That is substantially true. It is for the salesman's use.

Q. I believe you stated that is available to all customers, no matter how much they purchase?

A. It is available to all our salesmen for the best possible use that they can make of it.

Q. But there is no restriction as to customers not receiving it?

A. None.

Q. Will you kindly state the method and manner used by your company in arriving at the 50,000-case minimum purchase for the 15-cent allowance? Was it an arbitrary

figure that you just arrived at, or is it the result of research and study?

245 A. You are referring to the amount of 50,000 cases?

Q. That's right, sir.

A. That is a figure arrived at by us from our records and as a result of our experience.

Q. Experience in the sale and distribution of salt?

A. That is correct.

Q. How did you arrive at the figure of 15 cents per case allowance?

A. That figure of 15 cents is an arbitrary figure.

Q. Woud you state the method and manner used by your company in arriving at the 5,000-case minimum purchase for the 10 cents per case allowance?

A. We arrived at that figure in virtually the same manner as we did the 50,000-case figure.

246 Q. And the 10 cents per case is an arbitrary figure?

A. That is correct.

Q. I might be repeating myself, but it won't hurt to have it in the record twice.

Will you tell me how you arrived at the 250,000 purchase during a twelve months consecutive figure, will you state whether or not that is an arbitrary figure, in order to be eligible for the additional unit discount over and above a carload discount?

A. We arrived at that figure in virtually the same manner as the result of our experience.

Q. And it is an arbitrary figure?

A. That is correct.

Mr. Haslett: May I have just a moment's recess so I can study these documents, please?

Trial Examiner Purcell: Five minutes recess.

(A short recess was taken.)

Trial Examiner Purcell: We will come to order, please.

Mr. Haslett: Mr. Examiner, at this time, I would like to make the following statement for the record:

That Mr. Daniel Peterkin, Jr., president of the Respondent, Morton Salt Company, has, in compliance with the subpoena *duces tecum*, duly served upon him by the Federal Trade Commission, furnished information called

247 for in paragraphs 1 to 8, inclusive, as set forth in the subpoena. The information called for in paragraphs

9 and 10 has partially been furnished the Commission's counsel, and I am advised by counsel for the Respondent, Mr. McBride, that the balance of the information called for in the entire subpoena will be furnished either late this evening or tomorrow at some time, and if he finds it necessary to ask for additional time, that the subpoena will be fully complied with before the hearings in this proceeding have been concluded where testimony is introduced in support of the Commission's complaint.

Trial Examiner Purcell: Is that concurred in, Mr. McBride?

Mr. McBride: It is.

Trial Examiner Purcell: The statement stands.

By Mr. Haslett:

Q. Mr. Peterkin, you are entitled to witness fees in connection with this hearing. If you want to claim those, you can talk to the Examiner about it and file your affidavit.

A. Thank you very much.

Mr. McBride: May we be off the record.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

248 Mr. Haslett: Mr. Reporter, I hand you three documents that are attached and ask that they be marked for identification as Commission's Exhibit No. 48-A, B and C.

(The documents above referred to were thereupon marked "Commission's Exhibit No. 48-A, B and C," for identification.)

Mr. Haslett: I also hand you a document and ask that it be marked for identification as Commission's Exhibit No. 47-A and B.

(The document above referred to was thereupon marked "Commission's Exhibit No. 47-A and B," for identification.)

Mr. Haslett: I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 48-A, B, C, and D.

(The document above referred to was thereupon marked "Commission's Exhibit No. 48-A, B, C and D," for identification.)

Mr. Haslett: I hand you another document and ask it

be marked for identification as Commission's Exhibit No. 49-A and B.

(The document above referred to was thereupon marked "Commission's Exhibit No. 49-A and B," for identification.)

Mr. Haslett: I hand you this document and ask, Mr. 249 Reporter, that it be marked for identification as Commission's Exhibit No. 50-A, B, C, D, and E.

(The document above referred to was thereupon marked "Commission's Exhibit No. 50-A, B, C, D, and E," for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the Respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 46-A is a true and correct photostatic copy of correspondence passing between the main office of Morton Salt Company and the main office of The Great Atlantic & Pacific Tea Company, located in New York City, dated September 8th, 1936?

Mr. McBride: That is correct.

Mr. Haslett: May we have the same stipulation as to Commission's Exhibit 46-B, being correspondence from the main office of the Great Atlantic & Pacific Tea Company to the Morton Salt Company under date of September 10th, 1936?

Mr. McBride: Correct.

Mr. Haslett: And Commission's Exhibit 46-C is a contract called a quantity discount agreement, dated June the 20th, 1936, and signed by proper authorities of the Morton Salt Company and The Great Atlantic & Pacific Tea Company?

Mr. McBride: With respect to what period, Mr. 250 Haslett?

Mr. Haslett: I stated it, sir.

Mr. McBride: No, you gave the date of the contract.

Mr. Haslett: From the period June 20th, 1936, to the period June 20th, 1937.

Mr. McBride: That is correct.

Mr. Haslett: I offer Commission's Exhibits 46-A, B and C, into evidence.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being none, the instru-

ments described will be received in evidence and marked Commission's Exhibit No. 46-A, B, and C, respectively.

(The documents above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 46-A, B AND C," were received in evidence.)

Mr. Haslett: May we have the same stipulations, Mr. McBride, as to Commission's Exhibit No. 47-A, being correspondence passing between the Great Atlantic & Pacific Tea Company and the main office of the Morton Salt Company in Chicago, Illinois, under date of July 29th, 1937?

Mr. McBride: We may.

Mr. Haslett: Also a contract designated as a quantity discount agreement, dated June 21st, 1937, and ex-
251 piring on June 20th, 1938?

Mr. McBride: We may.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: There being none, the instruments described will be received in evidence and marked Commission's Exhibit No. 47-A and B, respectively.

(The documents above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 47-A AND B," were received in evidence.)

Trial Examiner Purcell: What is the date of Commission's Exhibit No. 47-A?

Mr. Haslett: July 29th, 1937.

Trial Examiner Purcell: All right.

Mr. Haslett: May we have the same stipulation, Mr. McBride, as to Commission's Exhibit for identification No. 48-A, being correspondence passing between the Great Atlantic & Pacific Tea Company's main office in New York and the main office of the Morton Salt Company, Chicago, under date of July 8th, 1938?

Mr. McBride: We may.

Mr. Haslett: And Commission's Exhibit No. 48-B, being correspondence passing between the main office of the Morton Salt Company in Chicago, Illinois, and The
252 Great Atlantic & Pacific Tea Company of New York, New York, under date of July 11th, 1938?

Mr. McBride: That is correct.

Mr. Haslett: And Commission's Exhibit for identification 48-C, being correspondence passing between The Great Atlantic & Pacific Tea Company of New York, New York,

and the Morton Salt Company of Chicago, Illinois, under date of July 19th, 1938.

Mr. McBride: Correct.

Mr. Haslett: And Commission's Exhibit for identification 48-D, being a quantity discount agreement covering the period June 21st, 1938, to June 20th, 1939, signed by authorities of both the Morton Salt Company and The Great Atlantic & Pacific Tea Company.

Mr. McBride: That is right.

Mr. Haslett: I offer that, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: There being none, the instruments described will be received in evidence and marked Commission's Exhibits Nos. 48-A, B, C and D, respectively.

(The documents above referred to, heretofore marked for identification, "COMMISSION'S EXHIBITS NO. 48-A, B, C AND D," were received in evidence.)

Mr. Haslett: May we have the same stipulation, Mr. 253 McBride, as to Commission's Exhibit 49-A, being correspondence passing between The Great Atlantic & Pacific Tea Company, New York, New York, and the Morton Salt Company of Chicago, Illinois, under date of June 21st, 1939?

Mr. McBride: We may.

Mr. Haslett: And as to Commission's Exhibit for identification 49-B, being a quantity dicount agreement covering the period June 21st, 1939, to June 20th, 1940, and signed by the authorities of both the Morton Salt Company and The Great Atlantic & Pacific Tea Company.

Mr. McBride: Correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: There being none, the instruments described will be received in evidence and marked Commission's Exhibits No. 49-A and B, respectively.

(The documents above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT NO. 49-A AND B," were received in evidence.)

Mr. Haslett: And as the last stipulation, may we have the same stipulation as to Commission's Exhibit for identification 50-A, being correspondence passing between The Great Atlantic & Pacific Tea Company of New York, New

York, and the Morton Salt Company of Chicago, Illi-
254 nois, under date of May 22, 1940?

Mr. McBride: Correct.

Mr. Haslett: And as to Commission's Exhibit for identification 50-B, being correspondence passing between the Morton Salt Company of Chicago, Illinois, and The Great Atlantic & Pacific Tea Company of New York, New York, under date of May 24th, 1940.

Mr. McBride: Correct.

Mr. Haslett: And Commission's Exhibit for identification 50-C, being correspondence passing between The Great Atlantic & Pacific Tea Company of New York, New York, and the Morton Salt Company of Chicago, Illinois, under date of June 5th, 1940?

Mr. McBride: Correct.

Mr. Haslett: And Commission's Exhibit 50-D, for identification, being correspondence passing between the Morton Salt Company of Chicago, Illinois, and The Great Atlantic & Pacific Tea Company of New York, New York, under date of June 7th, 1940?

Mr. McBride: Correct.

Mr. Haslett: And Commission's Exhibit 50-E for identification, being the quantity discount agreement covering the period June 21st, 1940, to June 20th, 1941.

Mr. McBride: Correct.

Mr. Haslett: And being signed and authorized by
255 various officers of both corporations?

Mr. McBride: That's right.

Mr. Haslett: I offer Commission's Exhibits 50-A, B, C, D, and E, into evidence.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objections.

Trial Examiner Purcell: There being none, the instruments described will be received in evidence and marked Commission's Exhibits 50-A, B, C, D, and E, respectively.

(The documents above referred to, heretofore marked for identification "COMMISSION'S EXHIBITS NOS. 50-A, B, C, D, AND E," were received in evidence.)

By Mr. Haslett:

Q. Mr. Peterkin, you stated this morning that you would make a search of your records to see if you had a photograph of the display that is used in the various stores. I understand that you have now done that, sir. Could you find one?

Mr. McBride: Off the record a moment, please, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

256 Will you read the question to the witness, please, Mr. Reporter?

(The question above referred to was read by the reporter.)

The Witness: I am sorry that we were unable to find one in our files in the Chicago office, but we have inquired of our eastern sales office, and if there is one available, we will obtain it at the earliest possible moment.

Mr. Haslett: May we be off the record just a moment, sir?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, I now refer you to your previous testimony regarding allowances made to various customers, for display services and facilities furnished by such customer in connection with the sale of your products, and ask you to state whether or not you know of your own knowledge that such allowance was made available and made known to each customer in each community where one or more customers of Morton Salt Company were getting such an allowance?

The Witness: May I ask to have that question reread?

Mr. Haslett: Certainly. Will you re-read the ques-

257 tion, Mr. Reporter, please?

(The question above referred to was read by the reporter.)

Trial Examiner Purcell: Do you want it read again, sir?

The Witness: Yes, please. I am not quite sure that I follow it.

Mr. Haslett: If you listen to it intently, I am sure that you will find it clear.

(The question above referred to was re-read by the reporter.)

The Witness: You refer now to the terms as outlined on our contract for merchandising displays?

By Mr. Haslett:

Q. That is correct, sir.

A. This contract was offered to and made available to all customers of the Morton Salt Company within the territory in which this plan was used.

Q. Mr. Peterkin, where a customer of Morton Salt Company, who is receiving the additional discount which is over and above the regular carload discount, has several branch warehouses where commodities are re-sold from such warehouses, but where such customer's purchases are placed through a central purchasing office, is that what is known in the trade as combined selling?

258 A. It may be known as that. I don't recall having heard that expression.

Q. Could you tell us if there is any special designation for that type of customer?

A. None that I know of.

Q. Such as C. D. Kenny & Company?

A. We would refer to C. D. Kenny Company as a jobber who has perhaps several branches.

Q. The same would be true as to Thomas & Howard?

A. Yes.

Q. In order that the record may be doubly sure and clear on this particular subject, and I know you want it to be so, the discounts on the case basis, that is the 10 cents per case on the 5,000 case purchase and the 15 cents on the 50,000 case purchase, are not in addition to a carload discount or a quantity discount?

A. No, they are not.

Q. They are separate discounts?

A. That is correct.

Q. And do not apply in a single instance, all four discounts?

A. All four discounts?

Q. That's right. You wouldn't allow a carload discount on a per case basis and on a $50,000 purchase basis, is that correct, sir?

259 A. A carload discount of one unit would be allowed to any purchaser of salt moving in a carload.

Q. But it is not allowed on free running or Morton's iodized salt?

A. It is not our practice, no. That is a net price.

Q. That is what I mean. And the additional discount of approximately five per cent of the basic works price

based on a $50,000 purchase during a twelve consecutive months period is in addition to the carload discount, is that correct, sir?

A. That is correct on the items to which that discount applies, yes.

Q. But in no instance does the $50,000 discount apply on Morton's free running or iodized salt?

A. No. A customer obtaining a discount on free running or iodized salt under Morton's brand would have to qualify either as a purchaser in any twelve consecutive months period as a 5,000 case buyer or a 50,000 case buyer, and he would be allowed the discount applicable to whatever class he might fall into.

Q. Am I correct when I state that Thomas & Howard is the only customer of Morton Salt Company who is receiving a quantity discount of approximately five per cent over and above the regular trade discount on the carload basis, who does not purchase from Morton Salt Company $50,000 worth of salt per year?

A. To my knowledge, that is so.

260 Q. Now, in cases such as the C. D. Kenney Company and Thomas & Howard Company, A. & P. Tea Company, and American Stores, Safeway Stores, the individual orders placed by such customers to Morton Salt Company do not require Morton Salt to ship all the salt to one particular point; it might be to any one of their branches, is that correct, sir?

A. It might be, yes.

Q. So the branch in South Carolina of C. D. Kenney might receive the salt and the bill might go to the Baltimore main office of C. D. Kenney?

A. Yes.

Q. In other words, you don't send all salt to the main office of the particular customer?

A. No, we do not.

Q. That is true as to Safeway and American Stores and A. & P.?

A. I believe it is.

Q. I believe the record shows various A. & P. branches in Detroit where the bill has been sent to New York?

A. (No answer.)

Mr. Haslett: May we have a moment off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

261 By Mr. Haslett:

Mr. Peterkin, just a couple more questions along this line. Do all list prices published and printed and distributed by the Morton Salt Company carry the same price for a particular type of salt in all areas where the product is sold? Do you understand that, sir?

A. I believe I do. We publish various lists for the convenience of our sales department, and I believe that substantially all of the prices shown in those lists for the same brand of salt are the same.

Q. That is all over the country?

A. Virtually all over.

Q. So there would be no differential between the sales prices of any particular type, brand, or grade of salt at various areas where it is resold, where it is sold by Morton Salt Company?

The Witness: Will you state that again?

Mr. Haslett: Will you read the question, please, Mr. Reporter, and I think you will find it is very clear.

(The question above referred to was read by the reporter.)

A. There would be a very great differential between the sales prices.

Trial Examiner Purcell: There would be what?

The Witness: There would be a very great differen-
262 tial between the sales prices of certain of our products.

By Mr. Haslett:

Q. That differential would be brought about by freight rates, is that right, sir?

A. Primarily so, yes.

Q. But would there be any differential in the basic works price?

A. Ordinarily there would not be.

Q. And that would be the same practically all over the country, the basic works price?

A. It might be and it might not be.

Q. What elements would enter into it that would change the basic works price of a particular grade of salt?

A. Principally competitive conditions.

Q. Where some other competitor was selling salt of the same grade and quality at a lower price, that would affect the price?

A. That is correct, it might.

Q. But, as a general policy, it is usually the same all over the country?

A. As a general policy, the prices are virtually the same for any given brand of our product.

Q. You have mentioned that competition might in some way affect the price, the basic plant price of salt?

A. It might.

263 Q. What other elements, if any, enter into the differential that may occur?

A. There may be several. Our own policy might dictate to us the need of reducing certain prices of certain grades of salt, or on certain brands of salt.

Q. And could you elaborate on that a bit and explain what you mean by our own policy, what effectuates such a change?

A. We might find, for instance, that one brand of salt for which we had invested a considerable sum of money in package machinery and equipment was not moving as rapidly as we might have hoped it would, the reason being that perhaps we had set too high a price on that particular article. If, after a study of the situation, it appeared to be good policy on our part to make a different price, we might very well change our basic plant price on that particular article without reference to competitive conditions.

Q. But would it be changed in all territories where it would be marketed?

A. It might not be.

Q. It might be changed in one territory and not changed in another?

A. The price in any one of our plants might be changed due to particular circumstances that existed at that plant, and in that marketing area, without necessarily affect-

264 ing price on that particular brand of salt at other plants.

Q. Would you have the same marketing area for the Manistee plant as you would for the Hutchinson, Kansas, plant?

A. Generally that is not true.

Q. They are different marketing areas?

A. They are.

Q. Do you call them marketing areas or trade areas?

A. We generally refer to them as marketing areas.

Q. Would you have any of the same customers in both areas?

A. It is possible we might.

Q. Such as large retail chains and cooperative groups?

A. I wouldn't know, but it might be.

Q. They are about the only elements that would enter into the raising or the lowering of the price of a particular brand or grade of salt in one area without making it national in other areas or effectuating it in other areas?

A. There might be other elements.

Q. Could you name some other elements?

A. Our judgment as to the best policy for us to pursue without reference to—

Q. Competition?

A. Competition, or investment in packaging equipment.

Q. You just don't arbitrarily change prices without any reason for it, do you, sir?

265 A. Not generally.

Q. Have you ever lowered the price of salt in any particular area without lowering it in another area without any reason whatsoever?

A. I can't recall of ever having done that.

Q. You always have a reason?

A. We always have a reason of some sort.

Q. Have you ever lowered the price of salt in a particular area in order to give any particular customer a better price on salt?

A. No. If we were to lower the price of our salt in any area, it would naturally follow that the customer would receive a better price.

Q. And all customers in that area would receive it, is that correct, sir.

A. Under those conditions, yes.

Q. Under those conditions, except what the record shows as to quantity discounts?

A. That is correct.

Mr. Haslett: May we go off the record just a moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record. Let me ask the witness a couple of questions.

266 By Trial Examiner Purcell:

Q. Are the fluctuations in the prices on salt particularly active?

A. Do you mean by that, do they occur frequently?

Q. Do changes take place very often?

A. Very seldom.

Q. About how often do you issue a new price list from time to time?

A. We may reissue a price list with minor changes as often as once a year, but ordinarily a price list is in effect for a period of years.

Q. For a period of years. What do you call "minor changes" necessitating the output of a new list?

A. That could come about by the change in a brand, discontinuing a brand, or adding a brand, or a change in general marketing provisions; any number of small changes that do not actually affect the price.

Q. In other words, then, I gather from what you say that the price of the two brands of salts here in blue cartons has been fairly stable over a period of a number of years last past?

A. I believe the price on the blue carton salt has been stable with the exception of the change necessary when—

Q. For the repackaging?

A. For the repackaging, since sometime prior to 1920.

267 Q. A matter of 22 years, perhaps?

A. Yes.

Mr. Haslett: I have just a few more questions I just thought of, if you do not mind, Mr. Examiner.

Trial Examiner Purcell: I do not mind.

By Mr. Haslett:

Q. Mr. Peterkin, will you give us a little historical background of the 6-percent, approximate 5-percent discount which is granted to customers that purchase in excess of $50,000 worth of salt per year over and above the regular carload discount? How long has that been in effect, sir?

A. To the best of my recollection, that has been in effect since 1928 or 1927.

Q. 1928 or 1927?

A. That is purely a guess on my part.

Trial Examiner Purcell: That was your testimony yesterday, sir.

The Witness: To the best of my recollection, that is about correct.

By Mr. Haslett:

Q. Can you testify whether Morton Salt was the first to initiate such practice?

A. No, I could not.

Q. Do you know of your own knowledge whether any other company had such practice in effect prior to the
268 time Morton Salt began to use the practice?

A. No, I do not.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Now, Mr. Peterkin, will you testify as to the historical background, if I may say so, on the 10 cents per case allowance which is granted to customers who purchase 5,000 cases of free running salt during a twelve consecutive months' period? When was that put into effect, sir?

A. I would estimate that as having been put into effect also in 1927 or 1928.

Q. And was Morton Salt Company the first to initiate that practice?

A. In that particular case no one else could have initiated the practice.

Q. I see.

A. Since that particular package is our own brand.

Q. And the same testimony would be true as to the 15 cents allowance per case?

A. That is correct.

Q. On the 50,000-case purchase?

269 A. I believe the two brackets were instituted at the same time.

Q. I believe you testified, Mr. Peterkin, about the approximate 5-percent discount on the carload basis as to when that was put into effect. I do not think it would hurt to have it again. Could you remember when it was put into effect by Morton Salt?

A. We have always had a discount, at least, so far as our present organization can remember, on a carload of salt, salt moving in a carload, but I do not recall just when we adopted the unit of discount as you now refer to it. I believe it was sometime in the early 1930's when the unit as such was adopted.

Q. Prior to that time they did have some carload discount?

A. Some kind of a carload discount, yes.

Mr. Haslett: Mr. Examiner, at this time I have no further questions for this witness. Documentary evidence will be forthcoming and I will be ready to proceed with him again tomorrow morning at 10:00 o'clock, but until I get the evidence that Mr. McBride will have for me at that time, I am forced to conclude the taking of testimony.

271 Room 1123,
New Post Office Building,
Canal and Van Buren Streets,
Chicago, Illinois,
Thursday, April 16, 1942.

Met, pursuant to adjournment, at 10:00 a.m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq. (Washington, D. C.), appearing for the Federal Trade Commission.

L. M. McBride, Esq. (310 South Michigan Avenue, Chicago, Illinois), appearing for Respondent.

272 Mr. Haslett: Mr. Reporter, I hand you herewith a document and ask that it be marked for identification as Commission's Exhibit No. 51.

(The document above referred to was thereupon marked "Commission's Exhibit No. 51," for identification.)

DANIEL PETERKIN, JR., resumed the stand and testified further as follows:

Direct Examination by Mr. Haslett (Continued).

Q. Mr. Peterkin, I hand you herewith what has been marked for identification as Commission's Exhibit No. 51, and ask you to state what it is, if you know, sir?

(Handing document to witness.)

A. This is a recap of the purchases made by the

Thomas & Howard Company of Columbia, South Carolina, for the years 1937 to 1941, inclusive, showing the num-
273 ber of cases of Morton's free running and iodized blue package salt purchased in each of those calendar years, the value thereof, the value of all other salt purchased by Thomas & Howard from the Morton Salt Company, and the total aggregate value of the purchases for each of those calendar years.

Q. This document known as Commission's Exhibit for identification No. 51 was prepared under your supervision and at your request?

A. It was prepared at my request.

Q. And prepared by competent employees of the Morton Salt Company?

A. That is correct.

Q. And the figures that appear thereon are true and accurate according to the books and records of the Morton Salt Company?

A. They are.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: Was that prepared in pursuance of the subpoena *duces tecum*?

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: Do you want to add that?

Mr. Haslett: I will add it.

274 Trial Examiner Purcell: There being no objection, the document offered will be received in evidence and marked by the reporter as Commission's Exhibit No. 51.

(The document above referred to, heretofore marked for identification "COMMISSION'S EXHIBIT No. 51." was received in evidence.)

By Mr. Haslett:

Q. Mr. Peterkin, am I correct when I state that the document known as Commission's Exhibit No. 51 was prepared in compliance with the subpoena duces tecum duly served upon you by the Federal Trade Commission?

A. That is right.

Q. Do you of your own knowledge know whether Thomas & Howard of Columbia, South Carolina, is a corporation with branches located throughout the States of North and South Carolina?

A. No, I do not.

Q. Do you have any dealings with other firms known as Thomas & Howard in other cities in South Carolina?

A. Other cities besides Columbia?

Q. That's right, sir.

A. I believe we sell Thomas & Howard at some other points.

Q. At Charlotte, North Carolina?

A. I don't know of my own knowledge.

Q. Would all Thomas & Howard purchases be
275 grouped and shown on Commission's Exhibit No. 51?

A. All of our sales to Thomas & Howard Corporation are shown—or Thomas & Howard Company, I believe they are known as—are shown on that exhibit, yes.

Q. No matter where they are located?

A. That is correct.

Q. And Thomas & Howard is a customer that receives an additional discount over and above the regular carload discount usually granted to customers who purchase in that quantity, is that correct, sir, that is the approximate five per cent discount?

A. You are speaking now of the $50,000 classification?

Q. That is correct.

A. That's right.

Q. They also receive an allowance of 10 cents per case on blue package salt?

A. That is correct.

Q. Thomas & Howard don't purchase $50,000 worth of salt from the Morton Salt Company per year, do they, sir?

A. No, they do not.

Q. Never have done it, so far as you know?

A. So far as I know, they have not.

Q. In order that the record may be clear on this particular point, Mr. Peterkin, I will ask you to state whether on the "balance all other" as shown on Commission's
276 Exhibit No. 51, that is in the next to the last column, Thomas & Howard received the approximate five per cent discount on the quantity basis?

A. I couldn't tell from this record. The approximate five per cent that you have been referring to is not an accurate description of the discount. The discount which we allow is one unit and is an amount of money, and is not five per cent, so it could not be figured at five per cent of those figures.

Q. Am I correct when I state that in the column shown on Commission's Exhibit No. 51, "balance all other", that Thomas & Howard receive a unit discount on the purchases of salt shown thereunder?

A. Could you re-read that question, please?

Mr. Haslett: Will you read the question, please, Mr. Reporter?

(The question above referred to was read by the reporter.)

By Mr. Haslett:

Q. Under this column. (Indicating.)

A. There are no purchases of salt shown in that column. That represents the value of all salt sold other than the Morton's blue package as shown in the next column to the left.

Q. I now hand you Commission's Exhibit No. 51,
277 Mr. Peterkin, and ask you to state, so that the record may be very clear on this, whether or not Thomas & Howard received a 10 cent allowance per case for each of the cases shown under "No. ctrs. blue can" as shown on Commission's Exhibit No. 51 during the year 1937?

A. That would be correct from this record.

Q. And the value of 8,875 cases was $13,317, is that correct?

A. That is what is indicated, yes, sir.

Q. And then we show a "balance all other," of $11,243.22, is that correct, sir?

A. That is correct.

Q. And Thomas & Howard received a unit discount based on a $50,000 twelve consecutive months purchase on that particular amount, is that correct, sir?

A That is not quite correct.

Q. Will you straighten it out, please, sir, and tell us what the facts are there?

A. If you could restate that—I am not quite clear as to your question.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Let the witness finish his answer and then we will go off the record.

The Witness: I am not clear as to the purpose of
278 your question—

By Mr. Haslett:

Q. Mr. Peterkin, I have stated it as clearly as I possibly can.

Trial Examiner Purcell: Now, let the witness finish his statement, Mr. Haslett, and then we will go off the record, and then you can have a discussion.

Now, will you please finish your answer, Mr. Peterkin, that you are not clear, and so forth.

Mr. Haslett: Will you read the last question, Mr. Reporter?

(The portion of the record above referred to was read by the reporter.)

Trial Examiner Purcell: Now, do you want to go off the record, Mr. Haslett?

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Yes, surely. I just don't like to go off the record when something is left up in the air. Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, I again hand you Commission's Exhibit No. 51 and ask you to state what discount would apply, if any, on the figures shown under the column 279 designated as "balance all other", for the year 1937?

A. The Thomas & Howard Company would receive from us a discount on the items of salt which we had sold to them in any of the years herein listed of one unit of discount, or approximately five per cent of the net works basis value on all items to which this discount applies, and whose value would be included in the "balance all other" column as shown on this exhibit.

Q. And that unit discount would be over and above the carload discount?

A. That is correct.

Q. And that unit discount has nothing to do with the case allowance on blue package salt?

A. None whatever.

Q. And that is true for the years 1938, 1939, 1940, and 1941, as shown on Commission's Exhibit No. 51?

A. That is correct.

Mr. Haslett: I think that clears it up, Mr. Examiner.

By Trial Examiner Purcell:

Q. Well, now, entering into that computation by which you arrive at a gross purchase of $50,000 or more to entitle them to a discount, do you include in the $50,000 figure the amount of packaged salt, blue package salt, in arriving at that discount?

A. Yes.

Q. You see, that is what I didn't understand. In other words, you say $50,000 of all kinds of salt from all sources, is that right?

A. No, that is not right.

Q. Well, then, where am I wrong?

A. Perhaps I could clear it up.

Q. Yes, I would appreciate it.

A. The Morton's free running and iodized salt is included in the value of purchases of table salts, but the approximate five per cent net works unit to which we have referred does not apply on the Morton's blue package salt.

Q. I understand that thoroughly.

A. That is not a discount applying in addition to the 10 cent discount.

Q. I understand that thoroughly. My question to you was, in order to entitle the purchaser to his discount, put him in the $50,000 category, you add up his purchases of salt of all kinds and descriptions, from all sources, is that correct? I don't mean by that to infer that he is entitled to a double discount, or anything like that, but to place him in the $50,000 category, you take into consideration all salt that he has purchased during a twelve months consecutive period from all sources, am I right in that?

281 A. Do you mean by "sources" that his total purchases of table salt from all salt producers are considered, or from Morton Salt Company?

Q. All salt producers.

A. No, we do not. His table salt purchases from the Morton Salt Company would be considered in arriving at the $50,000 gross value on which we would base our allowance of the approximate five per cent unit discount. In the case of this particular account, Thomas & Howard, we discussed that yesterday, I believe.

Mr. Haslett: That is correct.

The Witness: The reason for the allowance of this discount in this particular case.

By Trial Examiner Purcell:

Q. I am still struggling to get it straight in my mind. Of course, you have been living with this for years, but it is a novel proposition with me. Let us assume, sir, that this purchaser took $25,000 worth of your blue package salt and $25,000 of other brands from you. That would put him in the $50,000 category, would it not?

A. If he had purchased in any consecutive twelve months period $25,000 worth of Morton's free running and iodized blue package salt, and in addition $25,000 worth of other brands of Morton's table salt, he would have purchased an aggregate amount of $50,000 from our company, and would, therefore, be entitled to a quantity dis-
282 count, as we have discussed in this record on previous occasions.

Mr. Haslett: I think I can clear it up by questions on this particular customer, which would be relevant testimony as to the case here, clear it up in your mind, I think, with a few questions with regard to Commission's Exhibit No. 51.

Trial Examiner Purcell: Well, you go ahead and see what you can do.

By Mr. Haslett:

Q. Mr. Peterkin, I hand you again Commission's Exhibit No. 51 and ask you to note that during 1937, the value of the blue can salt sold to Thomas & Howard was $13,317, is that correct, sir?

(Handing document to witness.)

A. That is correct.

Q. And the "balance all other" brands of salt sold to Thomas & Howard was $11,243.22, is that correct, sir?

A. That is correct.

Q. Then they purchased in the aggregate from Morton Salt Company $24,560.22?

A. That is correct.

Q. They receive on the blue package salt the 10 cent allowance, because they had purchased more than 5,000 cases, is that correct?

283 A. That is correct.

Q. They received on other salts where the unit would apply an approximate five per cent additional discount, based on the works basis, due to the fact that Thomas & Howard had purchased from the International

Salt Company an amount equal to $50,000 worth of salt during a twelve consecutive months period, is that correct, sir?

A. That is substantially correct. As we have discussed, I believe yesterday, the Thomas & Howard Company, offered us the opportunity, that is the Morton Salt Company, the opportunity to serve one or more of their branches. We were told that our price was not attractive, and further investigation revealed the fact that other salt producers were allowing in accordance with their regular practice a discount, and we elected to meet that discount by applying to their purchases from us an amount equivalent to the approximate five per cent net works basis.

Q. And you did then allow that discount on the $11,243.22?

A. We allowed that discount on all items that they purchase from us on which that discount applies, that is correct.

Q. Which is included in the figure?

A. That is correct, sir.

Q. They did not purchase $50,000 from you?

A. They did not.

284 Q. And due to the fact that they had purchased $50,000 worth from one of your competitors, you allowed them the same discount on the $11,243.22 as they were receiving on the $50,000 of your competitor, is that correct, sir?

A. No, that is not correct. They may have purchased $50,000 worth, more or less, from a competitor. We were simply told that our price was not attractive, and we made it attractive by the allowance of this quantity discount, although they did not purchase the amount of salt necessary from the Morton Salt Company to permit us to allow that based upon our own figures.

Mr. Haslett: May we go off the record just a moment?

Trial Examiner Purcell: Yes. Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, Thomas & Howard Company is the only customer in the class of your customers that is purchasing less than $50,000 worth of salt from the Morton Salt Company and receives the additional discount?

A. To the best of my knowledge, that is correct.

Q. And when I say additional discount, I mean the approximate five per cent discount based upon the works basis price?

285 A. I understand.

Mr. Haslett: Mr. Examiner, I am through with this witness at this time and am ready to turn him over to Mr. McBride for cross-examination.

Mr. McBride: I think, Mr. Examiner, that I will waive cross-examination of Mr. Peterkin.

Trial Examiner Purcell: Very well, sir.

(Witness excused.)

286-287 Room 906, Pere Marquette Building,
New Orleans, Louisiana,
April 22, 1942.

Met, pursuant to adjournment at 10:00 a. m.

Before: J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

288 Mr. Haslett: Mr. Examiner, at this time, I hand the reporter the exhibits in this proceeding, and ask him to note on the record that they are sealed. I will ask him to physically unseal the envelope and see that 289 every exhibit is there that is now a part of the Commission's case.

Trial Examiner Purcell: I will state for the benefit of the reporter that the last exhibit number on behalf of the Commission was No. 51, and that no exhibits have been offered up to this time on behalf of the respondent.

Mr. Haslett: Mr. Reporter, have you examined the contents of the envelope I handed you?

The Reporter: I have.

Mr. Haslett: And you have found that all of the exhibits are intact and are here?

The Reporter: I have.

Mr. Haslett: Mr. Examiner, the exhibits were handed to me by the reporter in Chicago. I gave them a receipt for the exhibits and I brought them from Chicago to New Orleans. I think the matter is highly prejudicial to the case in general for either counsel for the respondent or counsel for the Commission to have physical possession of the exhibits during the course of travel, but I understand that from this time on that that will be eliminated, since this reporter is going to make the entire circuit with us.

Trial Examiner Purcell: Except the last two stops.

Mr. Haslett: Except the last two stops, yes, and at which time the Examiner can then designate who he wants to carry them. If he wants to carry them himself or if he wants me to carry them, I will be glad to do it. It
290 is not a question of carrying the exhibits, but the exhibits are a part of the record, and I don't think counsel for the Commission or counsel for the respondent should have the exhibits during the course of the proceedings.

Trial Examiner Purcell: The Examiner will probably solve the question by carrying the exhibits himself.

Mr. Haslett: Thank you, sir.

I will call as my first witness Mr. Bringhurst, of the Morton Salt Company.

ROBERT GEORGE BRINGHURST was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your name to the reporter?

A. Robert George Bringhurst.

Q. Where do you reside, Mr. Bringhurst?

A. My residence is 9128 Quince Street, New Orleans, Louisiana.

Q. In what business are you engaged, Mr. Bringhurst?

A. In the salt business.

Q. With what company are you connected?

A. Morton Salt Company.

Q. And how long have you been connected with
291 the Morton Salt Company?

A. I think the date was January 1, 1914, or approximately 29 years.

Q. That is a very nice record.

A. Well, I hope it is. The period is there.

Q. And, Mr. Bringhurst, that is the same Morton Salt Company that is a respondent in this case?

A. Yes, sir.

Q. And what position do you hold with the Morton Salt Company?

A. Sales manager.

Q. In the New Orleans territory?

A. In the New Orleans office.

Q. And what is the office of the Morton Salt Company located in New Orleans?

A. 707-710 Masonic Building.

Q. I think you misunderstood my question. What is it, a sales office?

A. A sales office.

Q. Does the Morton Salt Company also maintain a warehouse in New Orleans?

A. We maintain a warehouse.

Q. And what type of salt is stored in the warehouse at New Orleans?

A. Various grades that we produce.

292 Q. Round package blue label salt?

A. Yes.

Q. And then there are other grades of salt?

A. Yes, that is correct.

Q. Kleer salt?

A. That is a brand of salt.

Q. That is a table salt, also?

A. Yes, sir.

Q. How many employees are employed by the Morton Salt Company in the New Orleans office?

A. We have four in the office.

Q. How many salesmen?

A. We have ten.

Q. Ten salesmen?

A. That is correct.

Q. And, geographically, what territory do they cover, just generally?

A. Well, we reach as far as Alexandria, Louisiana, we might say south Louisiana. We take in the entire state of Mississippi and up to Clanton, Alabama, which is prac-

tically south Alabama, and northwest Florida, to Marianna or River Junction, Florida; a small section northwest, as we describe it.

Q. You don't go as far as Tallahassee?

A. No, River Junction is the dividing line and
293 there isn't anything, I don't think, beyond Marianna.

Q. How far west do you go?

A. Lake Charles, Louisiana.

Q. You don't go in the state of Texas at all?

A. No, sir, just south Louisiana on the west.

Q. And will you describe in detail the activities of your salesmen? Do they solicit orders for Morton Salt Company?

A. All of our salesmen solicit orders for our company.

Q. And what type of customers do they contact?

A. Well, they contact all classes of salt buyers.

Q. Well, would you classify some of those for us, please? Are they retailers, wholesalers, chain, or what?

A. Well, we have some men, I would say three, or possibly four, of the ten, who devote their entire time to missionary work, retail work. The remainder are what we call combination men, carload and jobbing trade.

Q. Now, when you say "missionary work", will you kindly elaborate on that just a little?

A. Well, they go to a retail store and solicit his order for the account of a wholesale groceryman, and the order is billed by the wholesale groceryman.

Q. I see. He is then acting as the salesman for the wholesale groceryman, is that correct?

A. No, sir, he is in our employ and sells salt for the account of this wholesale groceryman who has our
294 goods in stock.

Q. The wholesale groceryman doesn't pay any compensation for that service?

A. Oh, no.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: Go right ahead.

By Mr. Haslett:

Q. Then, will you kindly tell us some of the details of the activities of the salesmen who contact the wholesale groceryman and sell them on carload basis?

A. The wholesale grocery salesmen?

Q. No, your salesmen.
A. That contact the wholesale grocerymen?
Q. That is right.
A. He will gather orders from these retail men in many cases and take them over to the wholesaler and will figure up the amount of business that he has sold for this jobber, and endeavor to get a carload order from him.
Q. I see, and when you obtain a carload order from a particular jobber of salt, is the carload order transmitted to the Chicago office?
A. All orders for carloads are transmitted to the Chicago office.
Q. And the salt that is used to fill a carload order
295 doesn't come from your local warehouse, is that correct, sir?
A. We make no shipments of carloads from our New Orleans warehouse.
Q. What type of shipments do you make, what type of orders do you fill from the New Orleans warehouse?
A. Well, any order that comes in for us from the city here, from any buyer of package salt, sack salt, any grade of salt that we carry.
Q. In less than carload basis?
A. Yes, whatever quantity they may order.
Q. Well, when you say "whatever quantity", I mean, you are confining that to less than carload basis?
A. Oh, yes, we are making no carload deliveries from our warehouse.
Q. When your office receives an order for a carload basis, and transmits it to the Chicago office for fulfillment, is the account paid at the New Orleans office, or is the account paid at the Chicago office?
A. Well, city business, we bill.
Q. You bill yourself?
A. We bill city business.
Q. On carload and otherwise?
A. That is correct, but country business is all billed by Chicago.
Q. And whenever you have a sale of salt on a
296 carload basis which you bill from this particular office, do you grant to all customers who purchase on a carload basis, a carload discount?
A. We give them the carload printed scale, that is correct.

Q. And that shows on the invoice, is that correct?
A. That is right.
Q. You have customers in the New Orleans area that purchase on a carload basis, haven't you?
A. A few, yes.
Q. Would you name some of those customers?
A. Quong Sun Company.
Q. I didn't get that, sir.
A. The Quong Sun Company.
Q. What is that, a wholesaler?
A. Well, he is a shrimp manufacturer.
Q. A shrimp manufacturer, or canner?
A. He packs canned shrimp; he is a packer, we might describe him.
Q. And then, will you name some others, sir?
A. We don't have many carload buyers here. Occasionally we sell A & P a carload.
Q. But wherever you do sell a carload, you grant the carload discount?
A. We grant the carload discount, the carload printed scale price. We sell Ramelli carloads. He is a laundry 297 supply house.
Q. A laundry supply house?
A. Yes.
Q. He is a user of salt, or a consumer of salt, is he?
A. He resells it.
Q. He does resell it?
A. Yes.
Q. Does he repackage it and resell it as table salt?
A. I don't know that. I would say no, he sells it as he receives it.
Q. I presume Morton Salt Company has competitors?
A. Well, I don't know anything about competitors. I know there are a lot of people in the salt business, any number of them.
Q. Do you have any people that sell salt in competition with you to the wholesalers?
A. Yes, there are salt companies selling to the wholesale grocers, all of them, I imagine.
Q. The same type and same grade of salt that you sell?
A. Well, of course, we figure we have got a better grade of salt than the other fellow.
Q. Well, is the Jefferson Island Salt Company one of your competitors?

A. Well, they are in the salt business and they sell salt.

Q. Will you name some other people that are in the
298 salt business that sell in the New Orleans territory?

A. Carey Salt Company, Avery Salt Company, Myles Salt Company and Diamond Crystal, I believe, Diamond Crystal Salt Company.

Q. And they all sell salt to your customers in New Orleans?

A. Well, they sell the same trade we sell if they can interest the man.

Q. But you are both striving for the same business?

A. To get the business.

Q. Did you have a customer up to about six months ago by the name of C. D. Kenny?

A. I don't know how long it has been since he liquidated. Yes, I recall the name.

Q. C. D. Kenny Company?

A. That is correct.

Q. And up to just a short time ago he was a customer of the Morton Salt Company in the New Orleans territory?

A. That is correct, that was some time ago.

Q. Some time ago, now, could you definitely state just what time it was that he liquidated his business?

A. No, sir.

Q. Has it been within a year's period?

A. I just can't recall. I should think it has been more than a year ago.

Q. You think you could determine that for us and
299 advise us at some later date?

A. Oh, yes, I can get that information for you.

Q. I will appreciate that, sir. Now, the A&P Tea Company, are they a customer of Morton Salt Company?

A. Yes.

Q. And the Consolidated Companies, Inc.?

A. Consolidated Companies, Inc., yes.

Q. When I say "Inc.," I mean incorporated.

A. That is right.

Q. Gerde, Newman is a customer of Morton Salt Company?

A. Yes, sir.

Q. What prices are charged by your office here for round package free running salt, per case?

A. The scale price, which is $1.50 for 24 twenty-six ounce.

Q. The same price charged for iodized salt in round packages?

A. Yes.

Q. Are all customers charged that price for it?

A. Yes, sir.

Q. You don't sell it at different prices to customers from this particular office, do you?

A. I don't quite understand you.

Q. Do you sell it at different prices from this office?

A. No, sir.

Q. The round package salt?

300 A. No, sir, we sell at the same price to one as we do the other.

Q. Are there any customers of Morton Salt Company in the territory served by this particular office in New Orleans that receive a discount based upon the purchase of 5,000 cases of free running salt during a twelve consecutive months' period?

A. Yes.

Q. Would you name those customers, please?

A. Atlantic & Pacific is the only one.

Q. That is the only one?

A. That is the only one.

Q. What discount do they have?

A. On 5,000 cases it is 10-cents a container.

Q. Now, they receive additional discounts over and above that on 50,000 cases, is that correct, during the 12 consecutive months period?

A. That is right.

Q. They receive 15-cents discount per case, is that correct?

A. Well, we pay 10-cents here. What is paid, and I assume that is 5-cents which they would be entitled to, is paid for by Chicago.

Q. That is the only customer in the territory served from this particular office that receives that additional

301 discount, is that right?

A. A quantity discount. We have the quantity discount of 10-cents on 5,000, 15-cents on 50,000 cases, and they are the only one in the territory that qualify for it.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Bringhurst, I hand you herewith Commission's exhibit 3-A to 3-I, and ask you if that is the present scale of prices employed by your office in the New Orleans territory for the sale of salt to customers served in this particular area?

A. Yes, this is the scale, LT-18, that we are using.

Q. And only customers within this area are sold according to the scale, LT-18, known as Commission's exhibit 3-A to I, is that correct, sir?

A. On the grades shown in the scale, at the prices shown in the scale.

Q. Now, have you any other grades of salt that are not shown in that scale?

A. Yes, there is mineral salt, and we have evaporated salt.

Q. And is there a scale for the evaporated salt?

302 A. Yes.

Q. I hand you Commission's Exhibit 5-A to F, and ask you to state whether scale T-B, which is represented by Commission's exhibit number that I just named, is the scale used for the sale of salt to customers served from the New Orleans office?

A. As shown, covering the grades in the scale.

Q. And all customers are sold at prices specified in Commission's exhibit 5-A to F, is that correct?

A. That is correct.

Q. Up to the time that C. D. Kenny Company went out of business here in the New Orleans territory, they were receiving additional discounts over and above the carload discount, is that correct, sir?

A. If they qualified as a quantity buyer.

Q. Well, did they qualify?

A. I think they did.

Q. Did the New Orleans office of Morton Salt Company sell to the New Orleans branch of C. D. Kenny Company, 5,000 cases of free running salt during a 12 consecutive months period from June 19, 1936, to September 18, 1940, inclusive?

A. Well, I would have to look into my records and see.

Q. Could you determine that for us?

A. Yes, I could.

Q. Would it be of great difficulty?

303 A. Well, I would just have to go through our

records back in 1939 and 1940. We can get the information, surely.

Q. Is the A&P Tea Company billed directly by the Morton Salt Company from Chicago, or is it billed through your office?

A. The city business here, we invoice through this office.

Q. Now, is there an occasion, or has there been an occasion, where the A&P Tea Company would obtain its supply of salt from the warehouse of the Morton Salt Company located in New Orleans?

A. Yes, that is recent. They have been buying in carloads, and the last few months they have been drawing their supply from the warehouse.

Q. Have you been allowing the A&P Tea Company a carload discount on what they draw from the warehouse?

A. Our price is the same to them as it is to any other dealer. They all have the same privilege of drawing their requirements from the warehouse as they need it, on the same basis, of course, understanding they are entitled to the quantity discount.

Q. Well, now, let's just for the moment forget about the quantity discount and tell me whether or not the A&P Tea Company gets the carload discount on the salt that is shipped them from the New Orleans warehouse of the Morton Salt Company?

304 A. The printed scale price, $1.50, is what we charge them, yes.

Q. Now, that is on the round package salt?

A. That is right.

Q. Now, on the other grades of salt, such as Kleer salt, and the other grades of salt, do they get the carload discount on the purchase of salt from the warehouse of the Morton Salt Company in New Orleans?

A. Unfortunately, they buy no other salt from us.

Q. They just buy the round package salt?

A. Correct.

Q. And round package salt is not subject to the carload discount, is that correct?

A. The $1.50 price is the flat blanket price, and that is the price we are charging them.

Q. And do the invoices show the case discount that is granted to the A&P Tea Company of the salt that they purchase that is supplied out of the New Orleans warehouse?

A. The quantity discount, I don't believe, shows on the invoice or city billing.

Q. That is paid in the form of a check by the Chicago office?

A. No, we pay the 10-cents per container here.

Q. Oh, you do, sir?

A. Yes, at regular periods.

305 Q. Now, when do you pay that?

A. I think it is about every ninety days, about every quarter.

Q. And you keep a record of the number of cases of salt that are purchased within that period, is that correct?

A. That is correct.

Q. And then at the end of a ninety day period, you send them a check for 10-cents for each case of salt they purchased during that specified period?

A. That is correct.

Q. The Chicago office of the Morton Salt Company are also advised of the number of cases of salt that A&P purchased directly from your warehouse, is that correct, sir?

A. Well, they have a record of our sales; they have copies of our billing.

Q. And are also all copies of the billings of sales made from the New Orleans warehouse sent to the Chicago office?

A. That is correct.

Q. Now, you were stating to me, sir, that your company employs approximately ten salesmen.

A. Exactly ten, in our office, or rather, out of our office.

Q. And they travel throughout the territory you have specified, and solicit orders for the Morton Salt Company?

A. Some of them.

306 Q. And some do missionary work?

A. That is correct.

Q. But the whole ten of them either solicits orders or does missionary work, is that correct?

A. Correct.

Q. And do any of these salesmen call upon the A&P Tea Company?

A. Not salesmen.

Q. Do you call on them?

A. Occasionally, just occasionally.

Q. What is the purpose of your call?

A. Just goodwill, to see if I can get some business, and try to interest them in other grades, sell them a full line.

Q. Now, we were talking here about this missionary work, which the salesmen do in behalf of the Morton salt round package?

A. On all grades.

Q. All grades, is it?

A. All grades.

Q. Do they do any missionary work for the A&P Tea Company?

A. No, sir.

Q. They do not?

A. No, sir.

Mr. Haslett: Mr. Examiner, I was wondering whether or not with the permission of Mr. McBride, I might
307 excuse Mr. Bringhurst temporarily and take care of these other two witnesses?

Mr. McBride: I have no objection.

Trial Examiner Purcell: Very well.

Mr. Haslett: Will you stand aside, Mr. Bringhurst, and I will call these gentlemen here?

(Witness temporarily excused.)

Mr. Haslett: Mr. Kohlmeyer.

H. B. KOHLMEYER, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Kohlmeyer?

A. H. B. Kohlmeyer.

Q. And where do you reside?

A. In New Orleans.

Q. And in what business are you engaged?

A. In the wholesale grocery business.

Q. With what firm are you connected?

A. Gerde, Newman Company.

Q. And what is the business of Gerde, Newman Company?

A. Wholesale grocers.

Q. And does your company purchase salt from the
308 Morton Salt Company?

A. Yes, sir.

Q. Does your company have competitors here?

A. Yes, sir.

Mr. McBride: Mr. Examiner, I think I will object to that question, referring specifically to the word "competitors."

Mr. Haslett: I will rephrase the question, Mr. Examiner.

By Mr. Haslett:

Q. Are there other firms in the New Orleans territory engaged in the business of selling groceries and allied products that are seeking the same trade as your firm is seeking, sir?

A. Yes, sir.

Q. Would you name some of those people, firms?

A. Yes. Spot Cash Wholesale Company, Goodman & Beer, Crescent City Wholesale Company, Albert Mackey Company, Kohlmann Brothers & Sugarman, Inc., Witherspoon Brothers, Standard Paper Company—do you want some more?

Q. Is Standard Paper Company a wholesale grocer?

A. Yes, and Imperial Trading Company.

Q. I think that is sufficient, sir.

A. All right.

Q. Up to a short time ago, was C. D. Kenny Company a competitor—I will withdraw that. May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: Back on the record.

Mr. Haslett: Mr. Examiner, I have in the past used the word "competitor." I can assure counsel for the respondent and the Examiner that I have no secret meaning for that word. I know and concede that it is a word that needs to be interpreted in its legal aspects as well as its factual nature by the Commission and by this Examiner, but I do not feel that it works for the harmony and clarity of the record if I am required to rephrase questions to such an extent that I have to state continuously that various jobbers are in a particular business in a particular area. When I use the word "competitor," I mean someone seeking the same market, that is, someone in this particular market seeking groceries and allied prod-

ucts to the retailers in competition with this particular firm or this witness' firm, both seeking the same trade.

Trial Examiner Purcell: Let the record show an objection by Mr. McBride to the use of the word "competition," and "competitor," as the instance may be, and with the statement of Mr. Haslett, and in the interest of the record, I am going to overrule Mr. McBride's objection and
310 allow him a continuing objection in the future.

Mr. McBride: Mr. Examiner, may I ask also that your same position be taken and the same continuing objection on my part be noted as to the phrase "seeking the same market," for the same reasons indicated?

Trial Examiner Purcell: Yes, I will note that objection and overrule that.

Mr. McBride: And in view of the statement, I shall not make further objection to counsel's questions, with the understanding that I have noted a continuing objection to the use of those words and phrases.

Trial Examiner Purcell: That is right.

Mr. McBride: Thank you.

By Mr. Haslett:

Q. Mr. Kohlmeyer, up to and including about six or eight months ago, was C. D. Kenny with a branch located at New Orleans, a competitor of your firm?

A. They were, but I don't know whether it was six or eight months ago.

Q. Was it within the past year, would you say?

A. I think so.

Q. And they sold groceries, salt, and allied products to the retailers in competition with your firm?

A. Yes, they did.

Q. They were seeking the same business?

311 A. Yes, sir.

Q. I believe you stated that your firm does purchase from the Morton Salt Company?

A. Yes, we do.

Q. And what type of salt does it purchase from the Morton Salt Company?

A. It purchases evaporated table salt.

Q. Is that the round package salt?

A. The round package salt, yes.

Q. Known as free running salt?

A. Yes.

Q. And also iodized salt?

A. Yes, sir.

Q. Does it also purchase other types of salt or other brands of salt from the Morton Salt Company?

A. Intermittently, but in very small quantities.

Mr. Haslett: May we go off the record just one moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Kohlmeyer, do you know approximately the number of cases of Morton's free running or iodized salt that your firm purchased from the Morton Salt Company each year?

312 A. I would estimate between three hundred and four hundred cases.

Q. Is that purchased from the New Orleans branch of the Morton Salt Company?

A. Yes, sir.

Q. And do you know Mr. Bringhurst who was testifying in this case?

A. Yes, I do.

Q. And does he or any salesmen of the Morton Salt Company solicit orders from your firm?

A. Mr. Bringhurst has called on us intermittently.

Q. And have there been times that you purchased carload quantities of salt from Morton Salt Company?

A. No, sir.

Q. Do you get any discount or allowance of any sort from the Morton Salt Company?

A. No, sir.

Q. Have you ever gotten any allowance or discount of any kind from the Morton Salt Company?

A. No, sir.

Q. What is the resale price of the free running package salt by your firm to retail trade?

A. It is a variable proposition. We try to get $1.75—$1.70 to $1.75, but we have sold as low as $1.55.

Q. Paying $1.50 for it and on some occasions you
313 have sold it for $1.55, is that correct, sir?

A. Yes, in isolated cases.

Q. What would cause you to sell it at $1.55 a case?

A. Well, I have in mind one particular customer who beat us down to that price so that he could meet the chain

competition, claiming that he had to resell that salt for 7-cents a package, which would figure $1.68.

Q. I see, sir.

A. And in order for us to work with him, he is a good customer of ours, why, we offered to sell him Morton salt at $1.55 to help him out in meeting that competition.

Q. And you did make those sales to that particular customer?

A. Yes.

Q. Do you, of your own knowledge, know the price at which the A & P are reselling Morton salt to the consumer, per package cost?

A. Yes, I do.

Q. What is that price?

A. Seven-cents.

Q. Seven-cents a package?

A. Yes.

Q. And that figured $1.68 a case?

A. Yes.

Q. Do you have some other customers that you sell 314 for $1.70, I believe you said?

A. $1.65 to $1.70 is what we try to get.

Q. Have you any customers that you sell to at $1.70?

A. Yes, sir.

Q. At the present time?

A. Yes, sir.

Q. And you have had customers in the past that you sold to at $1.70?

A. Yes.

Q. Does Morton Salt Company grant any discount on a cash basis, that is, if the invoice is paid within a specified time?

A. No, there is no discount whatsoever, it is net.

Q. And you never received any discount from the Morton Salt Company of any nature, is that correct?

A. Yes.

Mr. Haslett: Mr. Reporter, I hand you herewith a document, and ask you to mark it for identification as Commission's Exhibit No. 52.

(The document referred to was marked "Commission's Exhibit 52", for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say that it is stipulated by and between counsel for the respondent and counsel for the Commission that the docu-

ment that has been marked for identification as Com-
315 mission's Exhibit No. 52, is a true and correct invoice
of the Morton Salt Company under date of March 30, 1940, and numbered 2204, being an invoice for Morton's free running and Morton's iodized salt, shipped to Gerde, Newman Company?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence and marked Commission's Exhibit No. 52.

(The invoice referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 52" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you another document and ask you to mark it for identification as Commission's Exhibit 53.

(The document referred to was marked "Commission's Exhibit 53" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 53, is a copy of an invoice numbered 2030, dated February 22, 1940, passing between the Morton Salt Company,
809 Masonic Temple Building, New Orleans, Louisiana,
316 and the Gerde, Newman Company, of New Orleans, Louisiana?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence as Commission's Exhibit No. 53.

(The invoice referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 53" was received in evidence.)

Trial Examiner Purcell: This is dated February 22nd.

Mr. Haslett: Mr. Reporter, I hand you herewith four documents and ask that they be marked for identification as Commission's Exhibit No. 54-A, B, C, and D.

(The documents referred to were marked "Commission's Exhibits 54-A, 54-B, 54-C and 54-D", for identification.)

Mr. Haslett: May we have the same stipulation, Mr. McBride, as to Commission's Exhibits for identification, 54-A, 54-B, 54-C, and 54-D, as we had for Commission's Exhibits 52 and 53; Commission's Exhibit 54-A being a true and correct copy of the monthly statement of the Morton Salt Company from the branch office at New Orleans, Louisiana, to Gerde, Newman Company; 54-B being
317 an adding machine slip showing the total purchases, and 54-C and D, being invoices numbered 1778 under date of January 4, and invoice No. 1904, under date of January 25, 1940, respectively?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Is there any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the reporter will mark the four papers as heretofore described as Commission's Exhibit 54-A, B, C, and D, in evidence.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 54-A, 54-B, 54-C, and 54-D", were received in evidence.)

Mr. McBride: Mr. Examiner, pursuant to our custom, I should like to request that I be permitted to withdraw Commission's Exhibits Nos. 52, 53, 54-A, B, C, and D, for the purpose of making photostats, thereafter the original exhibits to be returned to the record?

Trial Examiner Purcell: Permission is granted.

By Mr. Haslett:

Q. Mr. Kohlmeyer, I hand you Commission's Exhibit 52, and ask you to state whether or not the invoice is a representative invoice of the invoices that passed between the Morton Salt Company and your firm for Morton's
318 free running and iodized salt?

A. Yes, it is.

Q. And the price stated on there is $1.50 per case?

A. It is.

Q. And how long have you been paying $1.50 per case for Morton's free running and Morton's iodized salt?

A. I don't think the price has changed in eight or ten years.

Q. I hand you Commission's Exhibits 54-A, B, C, and

D, and ask you to state whether that is representative of a monthly account of the Gerde, Newman Company with the Morton Salt Company, a monthly statement, I should say, sir?

A. Yes, it is.

Q. Mr. Kohlmeyer, have you at any time requested the Morton Salt Company to grant and allow to your firm any discount on Morton's free running salt?

A. No, not directly, but, Oh, I guess maybe five years ago, I made an effort to pool some purchases among some various jobbers here to try to get a large quantity of salt together, so that we could purchase it, but I was unsuccessful in getting anywhere at all with that pool.

Q. Did you ever talk to Mr. Bringhurst about it, sir?

A. I think I might have mentioned something about it to Mr. Bringhurst, not that we had ever brought the thing to a head, because we never did get anywhere with it.

319 Q. And then, you have never received any discount from Morton Salt?

A. No, sir.

Q. Do you make any purchases from the International Salt Company?

A. Very small.

Q. Most of your business in the table salt line is with the Morton Salt Company?

A. No, it is not, most of it is with the Jefferson Island Salt Company.

Q. The Jefferson Island Salt Company sells salt to you in the same manner, in the same procedure in which Morton Salt Company sells the salt to you?

A. Yes.

Mr. Haslett: I think that is all. Your witness, Mr. McBride.

Cross Examination by Mr. McBride.

Q. Mr. Kohlmeyer, you heard the various statements made on the record by counsel for the Commission and the Examiner and myself with respect to our parley on competition?

A. Yes.

Q. So that when you answered counsel's questions generally in which he employed the word "Competitor" or "competition," and "seeking the same market," you had in mind other wholesalers operating here in the New

320 Orleans territory?

A. Yes, but I also had in mind the indirect fact that the people to whom we sell have chain competition.

Q. What I am trying to get at, though, without any specific reference to any particular people, you were describing and giving the list of jobbers here, those who were operating in the city of New Orleans?

A. That is correct.

Q. In response to counsel's questions?

A. Yes.

Q. And you indicated, Mr. Kohlmeyer, you sell Morton's blue can, both the free running and the iodized at, say $1.70, you sometimes even get over to $1.75, or you may be as low as $1.55, is that correct?

A. I would say that our overall average is about $1.65.

Q. But in the course of doing your wholesale business, you may at any given time be compelled to sell at a price to one of your customers where you may be getting your regular wholesale price from another customer, is that correct?

A. Yes. Of course, when we get $1.70 for Morton's salt, that type of account is often an institution who is very slow in paying their bills, and sometimes we have to carry those people for ninety or one hundred and twenty days. That is the reason why we feel we are entitled to 321 a little extra mark-up.

Q. But that could very well happen at the same time that you were selling, shall we say, one of your regular accounts, at $1.70 or $1.65?

A. I would say $1.65 would be about tops for the regular.

Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Kohlmeyer, you have just stated, I believe, in substance, that credit has something to do with the price at which you resell Morton's salt?

A. Yes, sir.

Q. A customer who pays his bills promptly would get a better price, is that what you mean, sir?

A. Yes, sir.

Q. You wouldn't have to carry him so long is that right, sir?

A. That is correct.

Q. And the cost of carrying him would be a factor in the price?

A. Yes.

Q. Then, of course, the other factor of placing your particular customer in a position where he can meet chain store competition is an important factor; is that correct?

A. Very important, yes, sir.

322 Q. But you do not sell any salt direct to the consumer, do you?

A. Oh, no.

Q. You sell only at wholesale?

A. At wholesale.

Q. And your customers are retailers, reselling salt in competition with A&P and other chain stores, to the consuming public, is that correct?

A. Correct.

Mr. Haslett: I think that is all.

Mr. Mc Bride: I want to ask one further question, Mr. Examiner.

Trial Examiner Purcell: Certainly.

Recross-Examination by Mr. McBride.

Q. You state, Mr. Kohlmeyer, that you purchased, approximately, as near as you can recall, 300 or 400 cases of the blue package from Morton per year?

A. I believe that is approximately correct.

Q. And your purchases have been on approximately that level for, say, the past seven or eight years?

A. Yes, sir.

Q. Not very much variation from that level?

A. I don't believe so.

Q. As near as you can recall?

323 A. That is right, yes, sir.

Mr. McBride: That is all.

Redirect Examination by Mr. Haslett.

Q. Could you state the reason why your sales have been increased, sir, over the period of time that Mr. McBride has just specified?

A. Yes, I imagine a large part of the reason is that the larger chains have been able to sell Morton's salt at a lower level to the consumer than our customers.

Q. If you were in a position, then, to sell salt in order to enable your customers to resell salt at the same price that the A&P sell it, then your business would proportionately increase, is that correct?

A. Yes, it has been increased on most other items that we handle on a competitive basis.

Q. It has been testified here, Mr. Kohlmeyer, that C. D. Kenny Company—I believe I am correct when I state that—have been receiving the 10-cents per case allowance from the Morton Salt Company, based on a 5,000 purchase quantity in a 12 consecutive months' period. Do you, of your own knowledge, know what price C. D. Kenny was selling that salt at at the time they were in business in New Orleans?

A. No, sir.

Q. Do you know whether or not they were selling 324 Morton's round package salt cheaper than your firm?

Mr. McBride: I object to that, if the Examiner, please. The witness has answered that he didn't know.

Trial Examiner Purcell: Objection sustained.

Mr. Haslett: I think that is all, thank you very much, Mr. Kohlmeyer.

(Witness excused.)

Trial Examiner Purcell: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: The recess is finished.

Mr. Haslett: Mr. Groetsch.

JAMES H. GROETSCH, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Your name is Mr. James H. Groetsch?
A. Yes, sir.
Q. Do you reside at New Orleans?
A. Yes, sir.
Q. And in what business are you engaged?
A. Wholesale grocery business.
Q. With what firm are you connected?
A. Crescent City Wholesale Company.

325 Q. And is that in the city of New Orleans?
A. Yes.
Q. What is the business of the Crescent City Wholesale Company?
A. Wholesale groceries.
Q. Wholesale groceries?
A. Yes, sir.
Q. Selling groceries and allied products at wholesale?
A. That is correct.
Q. And does your company purchase from the Morton Salt Company?
A. Yes, sir.
Q. And what type of salt does it purchase from Morton Salt Company?
A. The greater portion of our sales are the free running and iodized salt.
Q. And that is the round package blue label salt?
A. Yes.
Q. Do you have competitors?
A. In my line of business?
Q. Yes.
A. Yes, sir.
Mr. McBride: Pardon me, Mr. Examiner, I should subside after this, if I may have your statement in the record that your notation with respect to my continuing ob-
326 jection was not only with respect to the previous witness of the Commission, but as to any succeeding witnesses of the Commission on the remainder of the hearing.
Trial Examiner Purcell: You are correct, sir, I haven't changed my mind in the least.
Mr. McBride: I merely wanted that one clarity on it, and I shall subside hereafter. Thank you.
By Mr. Haslett:
Q. You say you do have competitors?
A. Yes, sir.
Q. Will you name some of them, please?
A. Albert Mackie Grocery Company.
Q. All right.
A. Imperial Trading Company, Spot Cash Wholesale Company, Gerde, Newman Company, Goodman & Beer Company, Witherspoon Brothers.
Q. All of those firms that you named are wholesale grocerymen?

A. Yes, sir.

Q. And they sell groceries and allied products to the retail stores?

A. Yes, sir.

Q. To retailers?

A. Yes.

Q. And you also sell your products, or you endeavor
327 to sell your products to the retailers, is that correct?

A. That is correct, sir.

Q. I believe you testified that you purchased round package and free-running salt and round packaged iodized salt from Morton Salt Company?

A. Yes, sir.

Q. And do you purchase from the New Orleans branch of the Morton Salt Company?

A. I really don't know whether it is the New Orleans branch or not. I know the salesman solicits us out of the New Orleans office.

Q. And you purchase through those salesmen?

A. Yes.

Q. What method and manner is employed by your firm in placing those orders? Is it based upon an inventory condition, or is it just sporadic? Do you place the orders as you need them?

A. We place the orders as we need them.

Q. And as the salesmen come around, you give them the orders for the amount you require?

A. That is correct, sir.

Q. And does the Morton Salt Company have its own trucks that deliver the products to your store?

A. Not to my knowledge, no, sir.

Q. Do you call for it, sir?

328 A. Our drays dray it.

Q. So, when you say "drays", you mean your trucks?

A. That is correct, yes.

Q. And they call for it at the Morton warehouse?

A. At the warehouse.

Q. Then they bring it from the warehouse to your particular stores?

A. Yes.

Q. You only have one unit; I mean, if is just one store, is it not, sir?

A. That is correct.

Q. Crescent City Wholesale Company is located on what street, sir?

A. 413 Poydras Street.

Q. And that is in New Orleans?

A. In New Orleans.

Q. And that is the only place the Crescent City Wholesale Company is located?

A. That is correct.

Q. It hasn't any branches in any other cities?

A. No, sir.

Q. Do you know the price which you pay to the Morton Salt Company for its round package salt per case?

A. $1.50 per case.

Q. Has that price been in effect for a long time?

329 A. To my knowledge, it has been in effect for several years. I don't know just exactly how long.

Mr. Haslett: May we go off the record just a minute, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company?

A. No, sir.

Q. Has it ever received any discounts or allowances from the Morton Salt Company?

A. No, sir.

Q. Has your company ever had the occasion to purchase salt from the Morton Salt Company on a carload basis?

A. No, sir, we have not.

Q. Your requirements are purchased in the amounts which you specify through the New Orleans office, and then your own trucks calling for it at the warehouse of the Morton Salt Company?

A. That is right.

Q. What price does your company sell the round package salt to the retailers for, sir?

A. Our regular price for resale is $1.65 per case,

330 but we have in certain instances sold it as low as $1.60.

Q. You have never sold it for less than $1.60?

A. Not to my knowledge.

Q. What was the reason for selling it for $1.60 per case?

A. Well, occasionally we would have a customer who would be in close competition with the chains, and we would feel as though we would like to offer him a little inducements, anyway, because you put him on some sort of competitive basis, and we cut our price five-cents for him.

Q. And when you say "the chains," do you mean the A&P Tea Company?

A. Yes, sir.

Q. And they operate stores throughout the city of New Orleans?

A. Yes.

Q. And that would be the reason?

A. Yes.

Q. Do you have other customers that you sell at $1.65 a case?

A. That is correct, sir.

Q. Do you know of your own knowledge the price which A&P are charging for Morton's round package salt per package?

A. I haven't seen it myself in their stores, but I understand the asking price is 7-cents in their stores.

Mr. McBride: If the Examiner please, I ask that 331 the answer be stricken, because it is not of his own knowledge.

Trial Examiner Purcell: Let it be stricken.

By Mr. Haslett:

Q. You don't know of your own knowledge, do you?

A. No, but from my employees, I know.

Trial Examiner Purcell: The answer is stricken.

Mr. Haslett: Well, Mr. Examiner, I feel that this man can certainly testify as to the information that comes to him in the regular course of his business from his employees. That is one of the exceptions to the hearsay rule, where the information comes through the regular course of his business, and he has testified that this came to him through his employees, the price at which the salt is being resold by the A&P Tea Company to the consumer. I think it is perfectly relevant and material to the issues in this case.

Trial Examiner Purcell: You are not confusing your rule with entries made in a book in the regular course of business, are you?

Mr. Haslett: I think that where information comes to a man who is the head of a business and runs it, and he can't, of course, be out in the trade running his business all the time, but this information comes to him in the regular course of his business, it is in the same category.

332 Mr. McBride: Mr. Examiner, if I may make my comment apply, there are ample ways in which counsel can get the same information without such a violation of the hearsay rule, without any identity in the question as to time, circumstances, or otherwise.

Trial Examiner Purcell: I will agree with you, and that is the very reason that I am rather surprised that you made the objection, but having made it, I will sustain you. Perhaps you would be willing to concede—or rather, withdraw your objection?

Mr. McBride: No, I would prefer not.

Trial Examiner Purcell: All right, objection sustained.

By Mr. Haslett:

Q. What position do you hold with your company?

A. I am the sole owner of the Crescent City Wholesale Company.

Q. And how many employees do you have, sir?

A. Oh, approximately 20 or 25, I am not sure.

Q. And do you have salesmen that go out and solicit orders from the retailers?

A. Yes, sir.

Q. And your salesmen are in the retail stores daily?

A. Yes, sir.

Q. And those orders are then brought in by the

333 salesmen, and as a result of which commodities are then transported from your principal place of business to your customers, located in New Orleans? Is that right?

A. That is right, yes, sir.

Q. Was the C. D. Kenny Company at any time one of your competitors?

A. Yes, sir.

Q. Do you know approximately when they went out of business?

A. I would say approximately a year ago.

Q. A year ago?

A. Yes, sir.

Q. And up to that time, did the C. D. Kenny Company operate here within the city limits of New Orleans?

A. Yes.

Q. And sold groceries, salt, and allied products to the retailers in competition with your firm?

A. Yes, sir.

Q. Do you know of your own knowledge what the C. D. Kenny Company were charging for Morton's free running salt?

A. No, sir, I do not.

Q. Do you know whether or not you have ever lost any customers to C. D. Kenny Company on Morton's salt?

A. No, sir.

Mr. Haslett: Mr. Reporter, I hand you herewith six documents, and ask that they be marked for identifi-
334 cation as Commission's exhibit No. 55-A, B, C, D, E, and F.

(The documents referred to were marked "Commission's Exhibit 55-A, 55-B, 55-C, 55-D, 55-E, and 55-F", for identification.)

By Mr. Haslett:

Q. Mr. Witness, I hand you herewith what has been marked for identification as Commission's Exhibit No. 55-A, B, C, D, E, and F, and ask you to state what it is, if you know, sir?

A. The top piece of paper is a statement of the Morton Salt Company. The second is an adding machine slip of ours.

Q. Just refer to them as numbers.

A. 55-B is our adding machine tape, 55-C is an invoice received by us from the Morton Salt Company.

Q. Under what date, sir?

A. Date of August 16, 1940.

Q. And what numbers are on it, sir?

A. No. 2926.

Q. Now, the next one?

A. 55-D is a dray ticket.

Q. A what, sir?

A. A dray receipt from the warehouse, showing the delivery to our truck of 15 cases of salt.

Trial Examiner Purcell: What is the date on that?

The Witness: The date, August 16, 1940. Exhibit
335 55-E is an invoice from the Morton Salt Company dated August 31, 1940, No. 3004. Exhibit 55-F is a dray receipt from the warehouse showing delivery to our

truck of 25 cases of Morton salt under date of August 31, 1940.

Mr. Haslett: I offer them, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described by the witness will be marked by the reporter as Commission's Exhibit 55-A, B, C, D, E, and F, respectively, in evidence.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 55-A, 55-B, 55-C, 55-D, 55-E and 55-F", were received in evidence.)

Mr. McBride: Mr. Examiner, at this time, may I make my usual request for the withdrawal of Commission's Exhibits 55-A, B, C, D, E, and F, for the purpose of photostats, returning the originals thereafter?

Trial Examiner Purcell: Granted.

By Mr. Haslett:

Q. Mr. Groetsch, I hand you again Commission's Exhibit 55-A, B, C, D, E, and F, and ask you to state whether or not the documents so marked as Commission's Exhibits 55-A, B, C, D, E, and F, are representative of the invoices and statements of the Morton Salt Company for pur-
336 chases of salt by your company from the New Orleans branch?

A. Yes, sir, they are, with the exception of this 55-B, which is our adding machine records, totaling their invoices.

Q. Just an adding machine record?

A. Our own adding machine record, which is a total of their invoices.

Q. I see. If a competitor of your company were selling Morton's free-running and Morton's iodized salt at $1.50 per case to your customers, would that in any way affect your business?

A. It would affect us to such an extent that we couldn't make a profit on our sales, the reason being that our cost is $1.50.

Q. Would your business be indirectly affected by the fact that the A&P Tea Company was selling salt to the consumer at an aggregate of $1.68 per case, while at the same time you are selling salt to the retailer at $1.65 a case?

A. I would say yes, it would be affected.

Q. Any differential in price in the sale of salt, would affect your business?

A. I don't understand that question.

Q. Well, if a competitor were selling salt at a cent less than the price at which you were selling it, it would affect your business, wouldn't it?

A. Yes, it would.

337 Q. Do you purchase any other grades of salt from the Morton Salt Company other than the free running and iodized salt?

A. Yes, we purchase other grades in very small amounts.

Q. Would Kleer brand be one of those grades?

A. Yes, C-l-e-e-r, or K-l-e-e-r, I don't know which.

Q. Kleer.

A. I think we purchased a few cases of Kleer, but I don't know how many.

Q. But it is not a big item with you?

A. No, sir, it is not.

Q. Have you ever requested the Morton Salt Company to grant an allowance to you, or any discounts whatsoever?

A. No, sir, we have never requested any.

Q. Have they ever offered to grant and allow you discounts?

A. No, sir.

Q. From your invoice price?

A. No, sir, they have not.

Q. Have they ever offered to allow you allowances of any sort?

A. No, sir.

Q. For any advertising purposes?

A. No, sir.

Q. Do you get a cash discount from Morton Salt if you pay your bill within a specified period of time?

A. No, sir.

338 Q. Am I correct when I state, sir, that you get no discount allowance rebate whatsoever from the Morton Salt Company?

A. That is correct, sir.

Mr. Haslett: I think that is all, Mr. McBride.

Trial Examiner Purcell: Off the record just a second.

(There was a discussion off the record.)

Mr. Haslett: I would like to ask just one more question, if I may, please, sir.

By Mr. Haslett:

Q. Do you know approximately the number of cases of Morton's free running salt that you purchase yearly?

A. I would say approximately from 200 to 250 cases.

Q. And would that be general for the past five years?

A. Yes, sir.

Q. Your business hasn't increased at all in the sale of Morton's salt?

A. No, sir.

Q. Has it decreased?

A. I wouldn't be able to answer that correctly.

Q. Do you feel that if you were in a position to place your customers in position where they could resell Morton's salt direct to the consumer at the same price that the A&P sell it to the consumer, that your business would be increased thereby?

339 Mr. McBride: If the Examiner please, we have had almost precisely the same question before, and I object to it at this time. It is a repetition of that question.

Mr. Haslett: I don't remember having asked that before.

Trial Examiner Purcell: Read the last question back, Mr. Reporter.

(Question read.)

Trial Examiner Purcell: I feel that that is a fair question. It is certainly germane to the issues here, and I am going to overrule your objection, and allow you an exception. You may answer.

The Witness: Yes, I have no doubt but what our sales would increase.

Mr. Haslett: I think that is all, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Mr. Groetsch, you stated in your direct examination that you have a number of other wholesalers in the city of New Orleans whom you identified as competitors of yours?

A. Yes, sir.

Q. And you named some seven or eight, as I recall, for the record?

A. Yes, sir.

Q. It is true, is it not, Mr. Groetsch, that from time 340 to time, and maybe simultaneously, at various intervals over a period of years, all of those wholesalers

whom you named would not be selling to their trade Morton's blue can at the same time at which you might be selling it to the trade, is that correct?

A. I don't know just exactly what price the others would ask, but I find in our line that we wholesalers are pretty much competitive.

Q. It is true, then, isn't it, that at a time when you were offering Morton's blue cans, for example, to your trade at $1.65, that some other independent wholesaler here in New Orleans might be offering the same blue can for $1.60, that is possible, is it not?

A. That is possible, yes.

Q. And it may have happened from time to time during the past six or seven years?

A. It may have.

Q. And it would be possible that while you were offering it at $1.65 they could be offering it at, let us say, $1.64 or $1.63, or any other price?

A. Yes, that is also possible.

Q. So far as you know, there has been no standard resale price on the part of the wholesalers here in New Orleans over any given period of time?

A. No, sir.

341 Q. So that if, shall we say, the Imperial Trading Company—you named that as one of your competitors?

A. Yes.

Q. So that while you had a price of $1.65 in force, Imperial Trading Company were to offer Morton's blue cans at $1.60, that would have a substantial effect on your business, would it not?

A. On that particular item, it would, yes.

Q. So far as your salt business in the blue can is concerned?

A. Yes, sir.

Q. How many salesmen do you have, Mr. Groetsch, regularly employed in soliciting New Orleans?

A. I think it is five.

Q. Do they endeavor to cover the entire city of New Orleans and its environs, is that correct?

A. Yes.

Q. Now, your particular business, your particular wholesale house, offers a very substantial number of grocery items in addition to Morton's blue can and many other salt brands, for that matter, is that correct?

A. Yes.

Q. These five salesmen, in turn, attempt to solicit in behalf of all of the stock that you carry, and not just the salt?

342 A. Yes, sir.

Q. Do you have any idea, Mr. Groetsch, how many retail outlets there are in the city of New Orleans?

A. I would judge that there is approximately between 1500 and 2000.

Q. You indicated, also, I believe, in your direct testimony, that occasionally, perhaps, or more than occasionally, you would sell for $1.60, whereas your regular price that you endeavored to receive was $1.65 a case on Morton's blue can?

A. Occasionally we have done that, yes.

Q. And that might be happening at the same time where you were forced to make a price of $1.60 to some customer while endeavoring to receive, or receiving $1.65 from your other customers?

A. Yes, sir.

Mr. Haslett: I object to that, and will withdraw my objection if counsel will clear up what he means by the word "force."

Mr. McBride: I am sorry, I will reframe the question, Mr. Examiner.

Trial Examiner Purcell: The question is withdrawn.

By Mr. McBride:

Q. It would be true, would it not, Mr. Groetsch, that while you were offering salt to your regular trade at your regular price of $1.65, that on other occasion that you
343 described, you might simultaneously be offering it to a particular customer or customers at $1.60 for any one of a number of reasons?

A. Well, I don't know just what you mean by offering it. When our salesmen go out, our price is understood to be $1.65, but we give him permission to use his own discretion to a certain extent, and if he sees fit to make his customer a price of $1.60 for a reason as stated before, where this man tells him: "Well, look here, I am in competition with these chains and I can't meet a selling item that cost me $1.65 for $1.68 and stay in business." Well, the salesman may say, "Well, all right, to help you, I will make it $1.60."

Q. And if you felt the circumstances warranted, you would approve a sale at that price?

A. That is correct, yes.

Q. You stated that you had some salesmen working in the city of New Orleans and its environs?

A. Yes, sir.

Q. Have you maintained approximately that sales force for perhaps the last six or seven years?

A. Yes, sir.

Q. You stated also on direct examination, Mr. Groetsch, that you had purchased, as nearly as you could recall, from 200 to 250 cases of Morton's blue cans over the past several years?

344 A. Yes, sir.

Q. I believe, in answer to counsel for the Commission's question as to whether or not your business had increased, you stated that it had not increased over a period of years?

A. I don't know whether I definitely stated that I knew it had not.

Q. As near as you could recall?

A. As near as I can recall, it had not, yes.

Q. Referring specifically to Morton's blue can salt?

A. Yes, sir.

Q. And the same would be true, as near as you could recall, that it has not decreased over the same period?

A. Yes, sir.

Mr. McBride: I think that is all, sir.

Redirect Examination by Mr. Haslett.

Q. Mr. Groetsch, you testified that if a competitor of yours were selling Morton's salt at a price lower than the price that you generally charged for Morton's free running salt per case, that that would affect your business, is that true, sir?

A. On that particular item, yes.

Q. On that particular item?

A. Yes.

345 Q. Now, all of our testimony is confined to Morton's salt. Now, if C. D. Kenny Company, one of your competitors, or rather, who was one of your competitors formerly, was selling salt at $1.60 a case, and you were selling salt at $1.60 a case, your profit would be 10 cents a case, would it not, sir?

A. Yes, sir.

Q. Taking into consideration your cost of distribution?

A. My profit would be 10 cents a case, out of which would come my cost of distribution.

Q. That is right, and C. D. Kenny's profit would be 20-cents a case, because they received, as has been testified in this case, a 10-cent allowance per case based on a quantity purchase?

Mr. McBride: If the Examiner please, I will have to object to that, because the witness is being informed as to testimony about which he hasn't even testified he knew anything about, with respect to C. D. Kenny, and I don't know how he can answer a question that is framed in that manner, unless and until he first testifies that he knows what C. D. Kenny's price is and his profit margin.

Mr. Haslett: I think counsel's objection is well taken. I will withdraw the question.

Trial Examiner Purcell: That saves me the trouble of ruling on it.

346 By Mr. Haslett:

Q. You stated on your cross examination that it was the general policy of your company to sell Morton's salt at $1.65 a case to all customers, except in instances where you want to be competitive, and you used the words "be competitive." Would you mind explaining what you mean by that, sir?

A. Well, I don't just recall testifying to that. The record will show that I did, if I did, but if I did, and I used the words "be competitive," would mean to sell it on the same basis as my competitor sold it.

Q. So, the only time, then, that you would deviate from your general price is to be competitive or sell it at the same price at which your competitor is selling it, is that correct, sir?

A. That is correct, if that is the way I answered the question.

Q. Do you know the price at which C. D. Kenny was paying for Morton's salt, for their round package salt?

A. No, sir, I do not.

Q. Did you ever hear through any sources connected with your business that C. D. Kenny was getting a quantity discount from Morton Salt Company?

A. No, sir.

Mr. McBride: I will have to object to that, Mr. Examiner.

Trial Examiner Purcell: He might state if he heard
347 through any source yes or no, and then be asked to state the source, and I will rule on the question.

Mr. Haslett: That was the question, and he answered no, as to whether he had heard, and I was going to follow it up if he had said "yes," but since he has said "no," I will leave it.

I think that is all, Mr. Examiner.

Mr. McBride: Likewise, Mr. Examiner.

Trial Examiner Purcell: You are excused, sir.

(Witness excused.)

349 Mr. Haslett: Mr. Grundmann, please.

FRANK GRUNDMANN, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Haslett:

Q. Mr. Grundmann, kindly state your full name for the record, please, sir?

A. Frank Grundmann, G-r-u-n-d-m-a-n-n.

Q. And do you reside in New Orleans?

A. Yes, 7734 South Claiborne, New Orleans.

Q. Is that in the city of New Orleans?

A. New Orleans, yes.

Q. What business are you engaged in?

A. Wholesale grocery.

Q. And what company are you associated with?

A. Albert Mackie Company, Inc.

Q. And where is that company located?

A. 319 Tchoupitoulas Street.

Q. Is that in New Orleans?

350 A. That is in the city of New Orleans, yes.

Q. And what is the business of Albert Mackie Company?

A. We handle wholesale groceries.

Q. You sell groceries and allied products to the retailers?

A. Yes, we do.

Q. What position do you hold with that firm?

A. I am the secretary-treasurer, and also a department manager, of which salt is one of the items that I purchase.

Q. You are the representative for that company in making purchases of salt?

A. Yes, sir.

Q. Where does your company sell its products?

A. What is that, sir?

Q. In what territory does your company sell its products?

A. We do only a local business in the city of New Orleans, and across the river in the towns of Algiers and Gretna, McDonoghville, Marrero and Harvey.

Q. Does your company have competitors?

A. Naturally.

Q. Would you name some of those competitors?

Trial Examiner Purcell: Naturally what?

The Witness: Naturally, we have. I would say all of the wholesale grocers are competitors of ours.

By Mr. Haslett:

Q. Within the city limits?

351 A. Within the city limits of New Orleans.

Q. Will you name some of them, please?

A. Well, you could go right down the line, Goodman & Beer, Gerde, Newman Company, Kohlmann Brothers, and Sugarman, Inc., Imperial Trading Company, P. A. Menard, Spot Cash, Crescent City Wholesale Company, Witherspoon Brothers.

Q. I think that is sufficient.

A. Maybe there are a few others that I can't recall.

Q. Your company confines its sales to retail grocerymen, is that true?

A. Retail grocerymen, yes, and hotel and institutional trade.

Q. Does it sell any direct to the consumer?

A. No, sir.

Q. Now, I believe you stated that your company purchases salt?

A. That is correct.

Q. Does it make any purchases from the Morton Salt Company?

A. We do.

Q. What type of salt do you purchase from the Morton Salt Company?

A. We purchase the Morton Package salt, that is, 24-26 ounce packages.

Q. Pardon me just a moment, in order to clear that up. Is that the Morton free running blue package salt?

352 A. Yes, and also the bulk salt, 100 pound bags, and of course, the fine salt and one and one-half pound squares, what they call square packages of salt.

Q. Do you know the brand name for that square package, sir?

A. I believe it is Kleer, isn't it?

Q. That is Kleer?

A. Yes, sir.

Q. Does your company purchase salt from the Morton Salt Company on a carload basis?

A. We do not.

Q. And do salesmen employed by the Morton Salt Company call upon your company?

A. I think they do, yes.

Q. And solicit orders for salt?

A. I think so, yes.

Q. You would answer that question "yes"?

A. I would answer that "yes."

Q. And you were going to elaborate on that?

A. I was going to say, however, most of the time we do not carry a big stock of salt, and we do draw, just as we need salt, on their warehouse.

Q. I see.

A. For our requirements in, say, 25 or 30 cases at a time. That is usually the procedure.

353 Q. And do your trucks go to the warehouse and obtain this supply of salt and bring it back to your place of business?

A. As far as I know, yes.

Q. And what price do you pay for the round package salt, per case, to Morton Salt Company?

A. $1.50.

Q. And that is for both free running and iodized salt?

A. Yes, sir.

Q. Do you know the price which you pay for the Kleer salt?

A. The Kleer salt, my recollection is 85-cents.

Trial Examiner Purcell: Is that hundredweight?

The Witness: No, that is a case of 36 one and one-half pound packages.

By Mr. Haslett:

Q. And that is what is generally known to the trade as 5-cent salt?

A. Five-cent salt, yes.

Q. It is sold to the consuming public at 5-cents per package?

A. Yes, sir.

Q. Does your company receive any discount, allowances or rebates of any kind from Morton Salt Company?

A. No, sir, we do not.

Q. Has your company ever received any allowance or discounts or rebates from the Morton Salt Company?

354 A. To my knowledge, no.

Q. You say, to your knowledge, no?

A. No.

Q. And how long have you been with the company?

A. Well, we took over the Albert Mackie Company 14 years ago. We are starting our 15th year in charge of business on April 1st past.

Q. And during that 15 year period, you have not received any discounts, allowances or rebates from the Morton Salt Company?

A. To my knowledge, no.

Q. Has your company ever requested the Morton Salt Company to allow them discounts?

A. No.

Q. They have not requested that?

A. No.

Q. Did your company know that Morton Salt Company does allow discounts?

A. We did not.

Q. Approximately how many cases of Morton's free running salt do you purchase a year?

A. I would say, roughly speaking, between 700 to 900 cases, possibly, a year.

Q. And has that been general for the past several years?

A. I would say yes.

355 Q. Do you think your business has increased in the sale of salt in the past several years?

A. I really would not be in a position to state that definitely. It may have.

Q. And it may not have?

A. And it may not have, I don't keep an exact record of purchases of salt.

Q. What is the resale price of Morton's round package free running salt by your firm to the retail trade?

A. $1.65 a case.

Q. And is that the general price that is now employed by your company?

A. Yes.

Q. Do you sell at any other price?

A. We may occasionally sell it as low as $1.60 on Government proposals, or proposals or inquiries from exporters, who, in turn, would have to rebill it to their customers; I mean, people like the United Fruit Company or Standard Fruit or Renshaw. In other words, on open competition we may bid $1.60 a case on it, and sometimes get the order.

Q. Does your company encounter the competition of the Creasy Corporation in any territory served by your New Orleans office?

A. Do we what?

Q. Encounter Creasy Corporation?

356 A. No, sir, I don't know of any.

Q. They operate out of Louisville, Kentucky.

A. No, sir.

Q. Was the C. D. Kenny Company a competitor of yours at one time, sir?

A. They were when they were in business.

Q. And they haven't been in business for how long, sir, here in New Orleans?

A. I couldn't state exactly. I would imagine possibly two years. I don't know whether it has been that long since they have gone out of business or not.

Q. But up to approximately two years ago, they were operating in New Orleans?

A. As long as they were open in New Orleans, they were a competitor of ours.

Q. And sold salt in competition with you in retail stores?

A. If they handled salt, they did.

Q. Now, you stated that your general price of salt was $1.65 a case?

A. That is right.

Q. And that on occasions you did sell at $1.60 to importers or exporters?

A. Exporters, yes.

Q. But, do you sell to retailers, any retailers, at less than $1.65 a case?

357 A. We do not.

Q. You do not, sir?

A. We do not.

Q. And that is a general price, and it is adhered to?

A. That is right.

Q. Do you of your own knowledge know the price at which the A&P stores are reselling Morton's round package salt to the consuming public, per package?

A. No, sir, I do not.

Q. If a competitor of yours, Mr. Grundmann, was selling Morton's free running salt, and Morton's iodized salt at $1.50 per case to your customers, would that in any way affect your business?

A. If a competitor was selling Morton's salt at $1.50?

Q. Yes.

A. Well, if he was paying $1.50 for it—

Q. Just answer my question, sir, if he was selling it.

A. Well, I would say yes.

Q. If he was paying $1.50 for it, that would be your cost, wouldn't it?

A. That would be our cost.

Q. Do you receive any discount on a cash basis, that is, is you pay your bills within a specified time?

A. Not on salt?

Q. Not on salt?

358 A. Not on salt, salt is net.

Q. Has there been occasions where you have been requested by one of your customers to sell salt to them at less than the general price at which you have been charging for Morton's round package free running salt per case?

A. Has there been a request?

Q. Yes.

A. I don't think so.

Q. Is there a chain of grocery stores in New Orleans known as H. G. Hill Stores?

A. There is.

Q. And they are retailers, are they, sir?

A. They are retailers, yes.

Q. Are they also wholesalers?

A. I don't think they do a wholesale business. I believe they warehouse just for the account of their own stores.

Q. Do they operate in other territories, if you know, sir?

A. I wouldn't say, but I think they do.

Mr. Haslett: Mr. Reporter, I hand you herewith five documents and ask that you mark them for identification as Commission's exhibit 56-A, B, C, D, and E.

(The documents referred to were marked "Commission's Exhibit 56A, 56-B, 56-C, 56-D, and 56-E, for identification.)

359 Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the Commission and counsel for the respondent that the documents marked for identification as Commission's Exhibit 56A is a true and correct monthly statement of the Morton Salt Company's branch house at New Orleans, Lousiana, directed to the Albert Mackie Company, Inc., and that Commission's exhibit 56-B is a true and correct invoice of the Morton Salt Company, No. 5461, under date of January 3, 1941, directed to the Albert Mackie Company, and that Commission's exhibit 56-C is invoice No. 5488 under date of January 5, 1942, directed to the Albert Mackie Company of New Orleans, Louisiana, and that Commission's Exhibit 56-D is invoice No. 5511, dated January 12, 1942, directed to the Albert Mackie Company of New Orleans, Louisiana, and that Commission's Exhibit 56-E for identification is an invoice numbered 5541, under date of January 17, 1942, directed to the Albert Mackie Company, New Orleans, Louisiana?

Mr. McBride: That is correct.

Mr. Haslett: Mr. Examiner, I offer them at this time, sir.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection to the

documents described, they will be marked by the re-
360 porter as Commission's exhibits No. 56-A, B, C, D, and E in evidence.

(The documents referred to, heretofore marked for identification "Commission's Exhibit 56-A, 56-B, 56-C, 56-D, and 56-E," were received in evidence.)

By Mr. Haslett:

Q. Mr. Grundmann, I now hand you Commssion's exhibit No. 56-A, B, C, D, and E, and ask you to state whether that is representative of the invoices and the statement received by your company of salt sold by the Morton Salt Company to the Albert Mackie Company?

A. It is.

Q. And that is the general type of invoices received by your company showing the price which you paid the Morton Salt Company for such salt shown thereon?

A. It is.

Mr. McBride: Pardon me, Mr. Examiner. I forgot to make my request for withdrawal for photostatic purposes, if I may make it with respect to Commission's Exhibit 56, just submitted.

Trial Examiner Purcell: Permitted. Does that also apply to Commission's exhibit 56-A, B, C, D, E, and F?

Mr. McBride: Yes. I think I made my request on that this morning, but in any event, I would like that to apply to those as well.

361 Trial Examiner Purcell: Very well, the request is granted.

By Mr. Haslett:

Q. Has your company been offered any advertising allowance to be used in connection with the promotion and sale of Morton salt by the Morton Salt Company?

A. No, sir.

Q. Then, am I correct when I state that your company receives no discount, allowances or rebates of any kind from Morton Salt Company?

A. Correct.

Q. And has not, since you have been connected with your firm? Is that right, sir?

A. That is correct.

Mr. Haslett: I think that is all, Mr. McBride. Your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Grundmann?

A. Yes, sir.

Q. Could you state approximately how many retail customers your firm has in the city of New Orleans and its environs, if you know?

A. Well, roughly speaking, I would say 500.

Q. So, as near as you can recall, Mr. Grundmann, 362 has that number remained more or less constant over the past six or seven years?

A. Yes, it has been constant.

Q. There has been a very litttle turnover in the customers who you serve?

A. That is correct.

Q. Do you serve approximately all of those retail customers with Morton's blue package salt?

A. I couldn't say that.

Q. You wouldn't know, of your own knowledge?

A. No, because if we did, we would be handling more Morton salt.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Grundmann, has your business in the sale of Morton salt increased or did your business in the sale of Morton salt increase in the year 1940 over 1939?

A. I couldn't answer that, sir.

Mr. Haslett: I think that is all, Mr. McBride.

Mr. McBride: I have no further questions.

(Witness excused.)

Mr. Haslett: Mr. Vogel.

EDWIN H. VOGEL was thereupon called as a wit-
363 ness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record?
A. Edwin H. Vogel.
Q. And where do you reside, sir?
A. Street address?
Q. No, do you reside in New Orleans?
A. In New Orleans, yes.
Q. And you are here in response to a subpoena duces tecum duly served upon you by the Federal Trade Commission?
A. Yes.
Q. And what business are you engaged in?
A. Retail chain grocery.
Q. With what company are you connected?
A. Great Atlantic & Pacific Tea Company.
Q. And what position do you hold with that company, sir?
A. Purchasing agent.
Q. Here in the New Orleans territory, sir?
A. Yes, sir.
Q. Now, will you describe for us the territorial or geographical limitations of the territory covered by the office of the A & P Tea Company here in New Orleans?
A. We have most of the states of Louisiana and Mis-
sissippi, some Alabama and west Florida.
364 Q. Do you go as far as Tallahassee?
A. No, we go only as far as Pensacola.
Q. And you are the purchasing agent for all of the commodities that are resold to the consuming public in the A & P stores serving those particular territories?
A. Yes, sir.
Q. In your duties as the purchasing agent of the A&P Tea Company in this territory, do you purchase salt?
A. Yes, sir.
Q. And do you purchase salt from the Morton Salt Company?
A. Yes.
Q. Have you competitors?

A. Yes.

Q. And have you chain competitors in the New Orleans territory?

A. Yes.

Q. Can you name some of them?

A. H. G. Hill Stores, Capitol Stores—are you referring to the cities?

Q. I would like to have a general picture of the whole territory, if you please, if you can remember some.

A. Del Champ Grocery Company in Mobile, Alabama, and the Greer Stores in Mobile, I believe those are the major chains.

Q. And in addition to these chain stores, you have
365 numerous retail independently owned grocery stores that are in competition with you, is that true, sir?

A. Yes, sir.

Q. Among which are the Corner Grocery Stores, numbering some 1500 in this city?

A. All of the independents are competitors.

Q. Your company does not sell any products at wholesale?

A. No, sir.

Q. That is, it sells only retail to the consuming public?

A. Yes, sir.

Q. What commodities does your company purchase from the Morton Salt Company, what types of salt, I should say, sir?

A. Table salt.

Q. Is that the round package free running salt?

A. Round package and the square packages on occasions.

Q. The round package would be the blue label salt, is that correct, sir?

A. Yes.

Q. I hand you here with Commission's Exhibit No. 27, and ask you if the facsimile of the package shown thereon is similar to the type of salt you sell to the consuming public under Morton's brand?

A. It is.

Q. What is the retail price at which you sell Morton's round package and free running and iodized salt to
366 the consuming public?

A. I am not prepared to answer that, we have various price zones.

Q. What is it in New Orleans?

A. Well, we have two price zones in New Orleans. I have nothing to do with retail prices.

Q. Well now, you are the sales manager for this company?

A. No, I am the purchasing agent.

Q. Purchasing agent for this company. Do you have any occasion to go into any of your retail outlets?

A. I have nothing to do with the stores.

Q. I say, do you go in them?

A. I go in them to make my personal purchases.

Q. You say you have two zones here?

A. Yes, sir.

Q. Do you know the price that Morton salt has resold to the consuming public in either of those zones?

A. No, it would be a guess if I gave you anything, I really don't know.

Q. Could you determine it from your office?

A. Yes.

Q. Would you use the telephone there before you and find out for us?

A. Yes, sir.

Q. Mr. Vogel, are you now in a position to testify
367 as to the retail price of Morton's free running salt in the zones in the New Orleans territory?

A. I am.

Q. Would you state the prices, please?

A. In our super markets it is 7-cents a package, and in our regular small stores, it is 9-cents a package.

Q. And your super markets are large retail stores covering a large plot of ground?

A. Yes.

Q. I was wondering if you could distinguish for us so that the record would be very clear on the subject, the difference between the super market and the regular stores?

A. The super markets are all large stores, stocking practically everything that a person would want in the food line, and they are all self-service; but that, I mean a customer waits on himself, which accounts for the lower prices, as compared with our smaller stores, which in many instances are only grocery stores without any meat or produce, where managers and clerks wait on the customers, so consequently, we charge higher prices for that service.

Q. How many super markets does your company operate in the New Orleans territory proper?

A. Fourteen.

Q. Fourteen super markets?

A. Yes, sir.

368 Q. And do you know how many of the regular stores are operated?

A. Ninety-two.

Q. Ninety-two?

A. Yes, sir.

Q. So, am I correct when I state that in fourteen stores, super markets of the A&P Tea Company in this territory, Morton salt is sold to the consuming public at 7-cents a package?

A. We have a super market zone for our city stores, and a separte super market zone at the country stores, where we have to route the freight. Now, there may be a difference in the retail price there.

Q. But you don't know it offhand?

A. No, I don't.

Q. But in the zone where the salt is resold for 7-cents, do you have regular stores, also?

A. Yes, sir.

Q. Where it is resold at 9-cents?

A. That is correct.

Q. And do you know the price which your company pays for Morton salt, for the round package salt, per case in New Orleans?

A. We pay $1.50 less 10-cents per case.

Q. And that is on all free running salt that you buy?

A. That is Morton's brands.

369 Q. And does that come in carload lots?

A. It comes, in most cases, we buy in carload lots, and at other times we pick it up out at their local warehouse.

Q. And do the trucks of the A&P Tea Company go to the local warehouse of the Morton Salt Company and get your supply of salt, and then carry it to the various stores?

A. No, it is taken to our warehouse for distribution to the stores.

Q. I see. And then you say on occasions you do buy in carload lots?

A. Yes.

Q. Has there been occasions where you would buy Kleer salt on a carload basis?

A. I have bought it on a carload basis, but not in carload quantities. I have included it in cars with Morton's brand.

Q. You mean, it has been a mixed car?

A. That is right.

Q. Of Morton's regular free running salt and some of the Kleer brand in there, also?

A. That is right.

Q. How is the discount allowed to your firm by the Morton Salt Company? Is it taken off the invoice price?

A. On Morton's brand, at the end of each quarter, we receive a check for the 10-cents per case, and on the
370 Kleer brands it is taken right off the invoice.

Q. Did you bring any figures along with you that would show the volume in cases purchased by the New Orleans office of the A&P Tea Company from the Morton Salt Company?

A. Yes, sir.

Q. May I have those figures?

A. Yes, sir.

Mr. Haslett: May we have a few minutes recess?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Reporter, I will hand you a document and ask that this be marked for identification as Commission's Exhibit No. 57.

(The document referred to was marked "Commission's Exhibit 57" for identification.)

By Mr. Haslett:

Q. Mr. Vogel, I will hand you a document which is marked for identification as Commission's Exhibit 57, and ask you to state what it is, if you know, sir?

A. It is a record of the purchases by the Great Atlantic & Pacific Tea Company in New Orleans from the Morton Salt Company during the entire calendar years of 1939 and 1940.

Q. And was that statement prepared at your request?

A. By me.

371 Q. It was prepared by you?

A. Yes.

Q. And are you ready to testify that the figures that appear thereon are true and correct, according to the books

and records and files of the Great Atlantic & Pacifis Tea Company?

A. Yes, sir.

Q. Is there any date on that document?

A. April 22nd.

Q. 1942?

A. Yes.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No, I think not, Mr. Examiner.

Trial Examiner Purcell: There being no objection, the statement described will be marked by the reporter as Commission's Exhibit No. 57 in evidence.

(The statement referred to, heretofore marked for identification as "COMMISSION'S EXHIBIT 57", was received in evidence.)

By Mr. Haslett:

Q. Mr. Vogel, I now again hand you Commission's Exhibit No. 57, and ask you to state whether during the year 1939 the Great Atlantic & Pacific Tea Company's office at New Orleans purchased from Morton Salt Company 5,000 cases or more of Morton's free running round package salt?

372 A. We purchased less than 5,000 cases.

Q. And during the calendar year beginning January 1, 1940, and ending December 31, 1940, did the Great Atlantic & Pacific Tea Company through its office in the New Orleans territory purchase 5,000 cases or more of Morton's free running round package salt?

A. We purchased less than 5,000 cases.

Q. In further explanation of Commission's exhibit No. 57, I would like you to state, and I call your particular attention to the date of purchase, March 22, 1939, and the next date of purchase, April 6, 1939, and ask you to state why theer was such an increase in the purchase of salt at that particular time?

A. You mean, March 22nd?

Q. Yes.

A. The March 22nd purchase was taken from Morton's local warehouse by our trucks, and the April 6th purchase was an assorted car shipped directly to our warehouse, and the larger quantity was needed to make the minimum carload weight.

Q. I see, sir. Then, that would be true as to the figures following April 6th?

A. All following are carload purchases.

Q. And all above March 22nd were taken from the warehouse of Morton Salt Company?

A. That is correct.

373 Q. Under all circumstances, your company paid the same price for the salt, whether it was in carload lots or whether it was taken from Morton's warehouse, is that correct?

A. Yes.

Q Did the company handle any other brands of salt, other than Morton's salt? Does it handle the products of any other company besides Morton?

A. Yes, sir.

Q. What other companies does it handle?

A. International Salt Company.

Q. Any others?

A. Jefferson Island Salt Company and Myles Salt Company.

Q. And all of those brands of salt are sold side by side in the A&P Stores, in competition one with the others?

A. Well, all brands aren't carried at one time. We more or less alternate, but we will have more than one that would be sold competitively.

Q. Well, is there any time when two or more brands are sold a the same time?

A. Now, are you referring to round cartons or square cartons?

Q. Any type of salt?

A. There are always two or more.

Q. From different processors?

374 A. Yes.

Q. Mr. Vogel, I will again hand you Commission's exhibit No. 57, and call your particular attention to the item appearing under "Kleer plain pkd 36 (shilling mark) 1½#" Will you kindly explain the prices there and the statement, "Less 5-cents" appearing thereon?

A. The list price varies at times according to the prices set by Morton Salt Company. However, the 5-cents is a discount given our company for quantity purchases.

Q. Does the Great Atlantic & Pacific Tea Company's purchasing office in the New Orleans territory purchase 50,000 cases of salt per year from any salt company?

A. Well, I am not prepared to answer that.

Q. Well, do they purchase 50,000 cases a year from the Morton Salt Company?

A. No.

Q. I believe you testified that they purchase less than 5,000 cases?

A. That is correct.

Q. So, they certainly would not purchase 50,000 cases.

Trial Examiner Purcell: You might explain to the witness that a year means 12 consecutive months.

Mr. Haslett: I think the exhibit clearly shows that. There are two years on the exhibit, and no twelve consecutive months would even show a 5,000 case purchase.

375 By Mr. Haslett:

Q. Mr. Vogel, if a competitor of yours was selling salt to the consuming public at one cent per package less than the price that you had for the salt of the same grade and quality and size, would that in any way affect your business?

Mr. McBride: May I please have that question read, Mr. Examiner?

Trial Examiner Purcell: Read the question, Mr. Reporter.

(Question read.)

The Witness: Well, as I told you previously, Mr. Haslett, I am purchasing agent, and that would strictly be a sales question, which I have nothing to do with.

By Mr. Haslett:

Q. I see. You are not in a position to testify to that, sir?

A. No, sir.

Q. You don't know whether it would affect your business or not if somebody was selling Morton's round package free running salt at 6-cents a package and your super market was selling it at 7-cents, and they were right across the street from each other?

A. I would say it probably would, but I am not officially permitted to answer.

Mr. McBride: I think, if the Examiner please, I 376 would like to have the answer stricken in response to the last question.

Trial Examiner Purcell: I will strike that certain portion of it after "I will say it probably would."

Mr, McBride: If the Examiner please, I should like to have that other portion stricken, because in his previous answer the witness testified that he was not anything other than the purchasing agent of the business, and would have no knowledge whether it would or not, therefore, I ask that the entire answer be stricken.

Trial Examiner Purcell: I will let that portion of it stand, because it would be his personal opinion, which he is certainly entitled to express.

Mr. McBride: I know, but if the Examiner please, I don't think we are interested here in the personal opinion of one witness of the A&P. We are interested in whether it would or would not, in answer to counsel's question. The witness previously testified, in answer to the previous question, that he had no way of knowing, or words to that effect, beyond his particular jurisdiction.

Trial Examiner Purcell: Let's go off the record here.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record. I will allow you your exception, and I am, letting the answer stand as stated:

377 By Mr. Haslett:

Q. Mr. Vogel, in order that the record may be clear as to this, would you outline, or define your duties as the purchasing agent of the Great Atlantic & Pacific Tea Company?

A. Well, generally, I purchase all merchandise required for our stores. That is, established brands, or anything new that comes on the market, why, it is referred to me, and we consider it as to stocking additional items. If any particular stores need the merchandise that we don't carry, that is referred to me, but if any merchandise falls off in sales to the point where we can't handle it, why, I am advised through the sales department to discontinue the purchasing of it.

I also control all small purchases made by our various out-of-town store managers.

Q. But under your general supervision lies the purchasing of all commodities resold to the consuming public in the territory that you have named, that is, Mississippi and southern Florida, and the other geographical locations?

A. Yes, sir.

Q. And I believe you just testified that if the sales

would fall off, you would be advised by the sales department, is that correct?

378 A. Yes.

Q. And you would, thereby, govern your activities as to the purchasing of commodities according to their furnishing you such information?

A. Yes, sir.

Q. So, if the sale of salt did fall off for any reason, you would know about it, would you?

A. Yes, sir.

Q. Will you state the method and manner in which you place orders with the Morton Salt Company for commodities to be shipped by the Morton Salt Company to the New Orleans office of the Great Atlantic & Pacific Tea Company?

A. We determine by the stock records the quantity we have on hand at all times, and when additional supplies are needed, we call the Morton Salt Company on the telephone and either arrange for it to be picked up by our truck or for a straight car to be shipped from their mines.

Q. Then, when you say you call the Morton Salt Company up, you call the local branch office of the Morton Salt Company in New Orleans?

A. My assistant calls that office, I don't know who he talks to there.

Q. But you don't place calls direct to Chicago?

A. Oh, no.

Q. And the results of those orders of commodities

379 are then shipped to the Great Atlantic & Pacific Tea Company here in New Orleans?

A. Yes.

Q. And they are there stored in the warehouse of the Great Atlantic & Pacific Tea Company, and disseminated, as the case may be, or as the requirements may necessitate?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. Examiner.

Cross-Examination by Mr. McBride.

Q. Mr. Vogel, you testified that you have in the New Orleans territory, or rather the city of New Orleans, I believe, fourteen super markets?

A. Yes, sir.

Q. It is true, is it not, Mr. Vogel, that you have estab-

lished super markets only within the last year or year and a half, perhaps.

A. Here in New Orleans?

Q. Yes.

A. Our first super market was opened four and a half years ago.

Q. Four and a half years ago?

A. Yes.

Q. But you have not had fourteen super markets from that time to date, is that correct?

380 A. No, sir.

Q. Wasn't your greatest increase in the opening of super markets within the last year or two?

A. Yes.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Vogel, has the 7-cent price now in effect in the super markets of the Great Atlantic & Pacific Tea Company been a constant thing since the markets were opened?

Mr. McBride: If the Examiner please, I object to that question. The witness testified before that he didn't know what the price was, and had to check with his own office.

Trial Examiner Purcell: I am sorry, I will have to ask to have the question read back.

(Question read.)

Trial Examiner Purcell: I will hear from you, Mr. Haslett, off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. The question is withdrawn?

Mr. Haslett: I will withdraw the question.

Trial Examiner Purcell: The question is withdrawn.

By Mr. Haslett:

Q. Who in your organization would know how long various retail prices have been in effect?

381 A. The sales manager.

Q. The sales manager of the organization?

A. Yes, sir.

Q. Would he also know the dates when such prices were put into effect?

A. Yes.

Q. Mr. Vogel, will you state whether or not your company has ever had the occasion to purchase Morton's salt from any local wholesale jobber of groceries?

A. No, sir.

Q. It has not had the occasion to do so?

A. It never has.

Q. You always purchased direct?

A. Yes.

Q. You are definitely sure about that answer?

A. I am sure in the city of New Orleans. The only exception might be in country towns where a store manager would run out of salt before his warehouse order arrived, and he might buy a case.

Q. It would be an exception, rather than a general rule?

A. Yes, a rare exception.

Mr. Haslett: I think that is all.

Mr. McBride: No further questions.

Trial Examiner Purcell: Thank you very much, Mr. Vogel.

382 (Witness excused.)

Mr. Haslett: Now, I will recall to the stand, Mr. Examiner, Mr. Bringhurst of the Morton Salt Company, and to pick up the thread of testimony, I will ask the reporter if he will read my last question to Mr. Bringhurst, if he has it before him.

ROBERT GEORGE BRINGHURST having previously been sworn, and temporarily excused, resumed the stand and testified further as follows:

Direct Examination (Continued).

By Mr. Haslett:

Q. Then, the only time that missionary work, as we have been talking about here, that was done with the Morton Salt Company, is done in connection with sales to the wholesaler?

A. Correct.

Q. I believe you testified, Mr. Bringhurst, that your company in the New Orleans branch sells Morton's free running and Morton's round package salt to all customers at the same price?

A. In the same classification, that is correct.

Q. Now, I will ask you to elaborate on that a little, sir, and tell me of some other classification where it is not sold at the same price.

A. If a man could not qualify to buy on the quantity
383 discount, everybody pays the same price, $1.50. Now, if he can buy 5,000 cases, anybody, he would be entitled to the 10-cents a case discount, regardless of his name or who he was, or if he bought 50,000, he would be entitled to 15-cents.

Q. But that would be the only exception?

A. That is right, that absolutely would.

Q. And now, if you had a customer located at some outlying territory who purchases, say, 500 cases a year, but purchases through your office here, would you sell him at the same price out there as you do here, in the territory outside of New Orleans?

A. If he bought in carloads.

Q. No, in less than carloads?

A. If he bought an I.C.L. shipment in New Orleans, and we had to go to the expense of shipping, the price would be higher, it would be $1.50 at New Orleans if he trucked it, but if we had to do the shipping, the price would be higher.

Q. And what would that price be, sir?

A. $1.60.

Q. And the difference between the $1.50 price and the $1.60 would then be an actual cost of transportation from New Orleans to the particular point of destination?

A. Well, in some cases it might cover the transportation charges.

Q. And in some cases, it might not?

384 A. It all depends on the distance.

Q. So, then, the only exception that you have to the general rule of a single price to all customers is where they purchase on a quantity basis, and where the cost of transporation to outlying territories is shown in the resale price of the salt, is that correct, sir?

A. When, as I said, our price is $1.50 in carload lots or from a warehouse in the city of New Orleans, it is $1.60 flat price in the country. Now, if you are a merchant and you ask us to ship you a few cases of our blue package out of New Orleans, our price would be $1.60.

Q. $1.60, no matter where the customer is located, if he is located within this territory?

A. Well, it is not reasonable to believe that we would ship it any great distance. He wouldn't buy it, because those people would buy in carload lots. It is only when a man might run short.

Trial Examiner Purcell: Pardon me, but will you please answer the question as put by counsel?

Let the reporter read the question back.

(Question read.)

The Witness: $1.60 would be the price, that is correct.

Trial Examiner Purcell: Any place in the territory?

The Witness: In the New Orleans office territory.

385 By Mr. Haslett:

Q. Now, as to the Kleer brand, is that particular brand sold to all customers at the same price at the New Orleans office of the Morton Salt Company?

A. Yes, in the same class.

Q. The same classes of customers.

A. Yes.

Q. The only differential of price would be on the quantity basis?

A. That is correct.

Q. Now, let's get into our other class now, where they are outlying customers in territories outside of the city limits of New Orleans. Would the price be increased accordingly?

A. Pardon me, are you referring to LCL or carload?

Q. That is carload lots.

A. In carload lots, the price would be the same as our published printed list, which is the printed list we have determined by the freight rates.

Q. Now, how about less than carload lots?

A. I don't recall any shipments of LCL on anything but round cans.

Q. You don't make any shipments less than carload lots only on free running round package salt, except as an exception to the general rule, and it is not the general rule, is that right?

386 A. Yes. Now, I would like to go to my records to verify if I made one shipment, as to that, I would have to check my records on that, ordinarily, no.

Q. I will accept that answer. Mr. Bringhurst, I believe you testified on your direct examination this morning that the only customer in the New Orleans territory that was getting the discounts on the quantity basis, that is, pur-

chasing during twelve consecutive months period a certain amount of salt, was the A&P Tea Company?

A. That is correct.

Q. Now, I believe on Commission's exhibit No. 42-A, B, C, and D, that H. G. Hill Stores have been listed as receiving a 10-cent allowance per case by Morton Salt Company. Now, they are your customers here, aren't they, sir?

A. H. G. Hill in New Orleans, yes.

Q. And do they receive the 10-cents?

A. We bill them absolutely at $1.50 a case. We have no adjustment with them, we don't know anything about any discounts. We have given no discounts to them.

Q. Well, you wouldn't say that the Commission's Exhibit 42-A, B, C, and D are wrong, would you?

Trial Examiner Purcell: Has the witness seen the exhibit?

Mr. Haslett: No, sir, but I am going to show it to him in just a minute.

387 Trial Examiner Purcell: I think, before he answers the question, it should be shown to him.

By Mr. Haslett:

Q. I hand you Commission's Exhibit 42-A, B, C, and D, prepared by the Morton Salt Company in compliance with the subpoena *duces tecum* duly served upon Daniel Peterkin, president of the company, and ask you to state whether or not the Hill Grocery Company and H. G. Hill tores, Inc., which appear thereon, being the fourth name from the bottom, are the same H. G. Hill stores that are operating in New Orleans?

A. The H. G. Hill Stores, Inc., operate in New Orleans.

Q. And that is the same H. G. Hill, Inc., as shown on Commission's Exhibit 42-A?

A. H. G. Hill tores, unless there has been some recent change, that is the style of their name here.

Q. You state that as far as you know, no discount is granted to H. G. Hill Stores, Inc.?

A. We don't, no, sir.

Q. Are they billed directly by your office here?

A. Yes.

Q. And you sell them at the same price you sell any other customer?

A. Yes.

Q. Do you know what territory they are located in, sir?

A. H. G. Hill Stores, Inc., they operate in the city
388 here and they may have a few outlying stores. I think they have one at Gulfport, and they may have two or three outside ones, I don't have the records of their outside stores, but I don't think they have many outside of the city of New Orleans.

Q. Does your company grant any discount on a quantity basis to Consolidated Companies, Inc.?

A. We don't have any discounts—there has been no business classified as a quantity buyer, except A&P in our territory. We wouldn't naturally have any quantity discounts.

Q. The only other one was the C. D. Kenny Company, which went out of business about a year ago?

A. I haven't checked into my records. I would have to check into my records and see. They have been out of business longer than a year, it seems. Time slips by so quickly.

Trial Examiner Purcell: Counsel's question is directed to the fact that up until the time they ceased to do business they were on a discount basis. Is that correct, sir, with you?

The Witness: My memory doesn't check.

By Mr. Haslett:

Q. Do you know approximately, Mr. Bringhurst, the annual dollar volume of sales made by your office here in New Orleans for the year 1940?

389 A. Our total sales, billings here out of the New Orleans office?

Q. Yes.

A. I can make a guess at it, approximate it, possibly.

Q. Well, I don't want too big a guess. I wouldn't mind an approximation of some sort,—I will withdraw that question, Mr. Examiner.

How many trucks are owned and operated by the Morton Salt Company here in New Orleans?

A. None.

Q. No trucks at all?

A. No, sir.

Q. Will you kindly state the class of customers that are sold directly by the Morton Salt Company from the New Orleans office?

A. Wholesale grocerymen, manufacturers, feed people, laundry people, any industry that uses salt.

Q. Retail chain stores?

A. Retail chain stores?

Q. Such as A&P?

A. Well, we sell them, yes.

Q. And Capitol Stores?

A. Yes, we sell them.

Q. And H. G. Hill Stores?

A. Yes, sir.

390 Q. They are all retail chain stores?

A. Yes, we sell them.

Q. Do you sell any independent retailers direct?

A. Not to my knowledge, we are not selling any retailer, individual retailer, with one or two stores, not to my knowledge.

Trial Examiner Purcell: Do you sell to jobbers who do sell to the retailers?

The Witness: That is our procedure.

By Mr. Haslett:

Q. What are the general credit terms allowed by the branch office of the Morton Salt Company located here in New Orleans?

A. In which to pay their invoice?

Q. That is right.

A. Thirty days.

Q. Any discount for payment within a specified time?

A. No, sir.

Q. You don't have any one per cent ten days?

A. Always net.

Q. So, you collect all of your bills in thirty days?

A. Well, I don't know what our record is, but we would like to collect them in thirty days.

Q. Are salesmen paid on a salary basis?

A. On a salary basis.

Q. Any commission?

391 A. No commission.

Q. I believe this morning, Mr. Bringhurst, you named quite a few of your competitors, such as the International Salt Company and the Jefferson Island Salt Company? Do you recall that, sir?

A. I named some producers that are in the salt business, but I didn't classify them as competitors.

Q. Well, you named several producers, then?

A. Correct.

Q. And these producers process, sell and deliver salt in the same territory that you process, sell and deliver salt, is that right?

A. They solicit salt from customers we are soliciting.

Q. I mean, solicit sales?

A. Sales, rather, solictiing orders, and I see their salt in stocks, so they are evidently shipping to them, or they wouldn't have it.

Q. You would acknowledge the effort of various producers to sell their salt in all of the territories where you sell your salt, is that correct, sir?

A. That is right.

Q. Now, what type of advertising is used by the Morton Salt Company in the New Orleans office?

A. Chiefly cards, streamers and pennants.

Q. Now, I will ask you to explain what you mean by cards?

392 A. Well, it is a display card that we might hang or paste on a window.

Q. About what size is it?

A. Well, we have various sizes, I don't recall our latest designs. I would say maybe 14 by 20, something like that.

Q. Would it be possible, Mr. Bringhurst, with a representative assortment of the type of advertising that is employed by the Morton Salt Company here in New Orleans?

A. Yes.

Q. We would appreciate that, if you can bring it.

A. Yes, we have a supply here. I don't know that it is a full supply but we can give you an assortment of what we have on hand.

Q. That will be satisfactory, sir. Are the various mediums of advertising used by your company here in New Orleans distributed to the retailers or to the wholesalers?

A. We do not distribute any advertising material to the retail trade or any class of trade. The material is placed by our own salesmen in the stores.

Q. In what stores?

A. Retail stores.

Q. Is the material, the advertising medium, placed in the stores by your salesmen at the request of the retailer?

A. In many cases.

Q. And in some cases, is it put in at the instance of
393 the salesmen of the Morton Salt Company?

A. Our salesmen would like to suggest to a retailer, I might express it that way, that we could increase his sales by some publicity if he would permit us to put a card or some advertising material where it could be seen.

Q. Now, does the Morton Salt Company, in the New Orleans territory, pay, grant or allow any compensation in any form whatsoever?

A. No, sir.

Q. To retailers for the privilege of putting in this medium of advertising?

A. No, sir.

Q. You are under the supervision of the Chicago office?

A. Yes, sir.

Q. And who is your immediate superior?

A. Well, Mr. Peterkin is my superior, and Mr. Stratford.

Q. And who is Mr. Stratford?

A. Mr. H. R. Stratford.

Q. What is his position?

A. He is sales manager.

Q. For the Morton Salt Company?

A. That is correct.

Q. And is his office located in Chicago?

A. Yes.

Q. And he is your immediate superior?

394 A. Yes, sir.

Q. What is the purpose of this advertising medium that we have been talking about, sir?

A. Well, publicity, to be a reminder to the consumer as to her reason why she should buy our blue can.

Q. Well, would you say it is to promote the sale of Morton salt?

A. Well, it is to increase the demand on the consumer's part.

Q. Are there any brokers located in the New Orleans territory where brokerage is paid by the Morton Salt Company upon the purchases of the various customers located in this territory?

A. Yes.

Q. And what is the name of that broker?

A. In the city of New Orleans?

Q. Yes.

A. We have no brokers in the city of New Orleans.

Q. Have you any in the territory under your supervision?

A. Yes.

Q. Where is that broker located, sir?

A. We have a number of them.

Q. Could you name some of them?

A. Yes, we have H. P. Bass & Company, Mobile, Alabama. We have Oscar Maura, Pensacola, Florida,
395 Shank & Reeves, I think that has been changed to Reeves Brokers, but you might put it down as Shank & Reeves, Montgomery, Alabama. We have Ayers Brokerage Company at Dothan, Alabama. We have Smith Brokerage Company at Meridian, Mississippi. We have R. W. Weil & Sons, Vicksburg, Mississippi. We have Dickins Brokerage Company, Greenwood, Mississippi. I will have to think now. Do you want the complete list?

Q. No, I think that will be sufficient. I want to ask you this question, Mr. Bringhurst, as to whether or not you have any brokers located within the territory of New Orleans?

A. In the city of New Orleans?

Q. Yes, the territory of New Orleans, that is, within the city limits?

A. No, sir, we have no brokers.

Q. Do any of the salesmen of the Morton Salt Company operating out of the New Orleans office call upon customers that purchase through brokers of the Morton Salt Company?

A. Yes.

Q. And do they solicit orders for Morton Salt Company and turn such orders over to the brokers?

A. No, sir, not to our knowledge, they don't.

Q. Well, do they solicit orders for the Morton Salt Company?

A. May I ask, do our salesmen solicit?

Q. Do the salesmen solicit orders for the Morton
396 Salt Company from those customers?

A. That the broker visits?

Q. That is right, sir.

A. Yes, sir.

Q. And the orders are placed there in your office?

A. Yes.

Q. And then the customers also place orders with Morton Salt Company through their brokers?

A. Yes, sir.

Q. When the orders are placed by the customers that are solicited through brokers, through the salesmen of the Morton Salt Company, is brokerage paid to the brokers by the Morton Salt Company who handle that particular account?

A. Yes.

Q. So, I am correct when I state, Mr. Bringhurst, where a customer places his order through the Morton Salt Company's own salesman, and he is in a territory where the broker is representing the Morton Salt Company, that the broker receives his brokerage on that customer's purchases, notwithstanding the fact that he did not solicit the order?

A. Yes, sir.

Q. Mr. Bringhurst, are there times when your salesmen accompany your broker in soliciting sales of salt for the Morton Salt Company?

A. Yes.

397 Q. And the broker is then paid the commission on that particular sale?

A. Yes, sir.

Q. Is that a general practice in the industry?

A. I know only about the south, or as far as our territory is concerned, it is customary to have brokers, they represent many producers. They have a full line of salt and other commodities. It is just the custom and it has been that way for year and years, and they actually perform services in most cases, good service. In case our salesman isn't around, he will drum up the trade and send in a carload or so, but he is actually performing a service. We might lose that car if it were not for this broker's actively soliciting the business.

Q. What is the amount of brokerage usually paid, sir?

A. Twenty-five cents a ton.

Q. Twenty-five cents a ton?

A. Twenty-five cents a ton, that is correct, twenty-five and thirty cents a ton.

Q. What is the twenty-five cents for?

A. That represents the brokerage when the freight is paid by the—now, let me get this straight, when the freight is paid by the buyer or a prepaid shipment, it is less than when we pay the freight, that makes the differential.

Q. Where you pay the freight, then, it is twenty-five
398 cents, and where the customer pays the freight it is thirty cents, is that correct?

A. That is correct.

Q. You have testified here, Mr. Bringhurst, that a number of customers of Morton Salt Company purchasing salt through the branch office at New Orleans, called for their own product, called for the salt at the warehouse of the Morton Salt Company, is that correct, sir?

A. All of them call at the warehouse.

Q. Do you give them an allowance for the handling of that salt, for the hauling of that salt from the warehouse to their place of business?

A. No.

Q. No allowance is made whatsoever?

A. None whatever.

Q. You have no cartage allowance?

A. No cartage allowance.

Q. Do you know what I mean by cartage allowance?

A. Yes, we have only one price, and that is our warehouse carload price.

Q. Have you any customers that purchase on a carload basis?

A. In the city of New Orleans, or the New Orleans office territory?

Q. In the New Orleans office territory.

A. Yes.

399 Q. And could you name some of those customers for us?

A. I could name quite a few of them. Ten-Day Grocery Company, Hammond; Merchants Grocery Company, Hazelhurst, Mississippi, Williams Grocery Company, McComb, Mississippi, Merchants Grocery Company, Summit, Mississippi, and the Pansica Brothers.

Q. Have you any customers in New Orleans on carload basis?

A. Yes, sir.

Q. Name some of those.

A. Ramelli.

Q. He is a canner, isn't he?

A. He is a laundry supplier.

Q. Let's confine it to wholesalers.

A. Wholesalers; wholesale grocers?

Q. Yes.

A. There is not, to my knowledge, a carload buyer of salt in the wholesale trade at the present time from the Morton Salt Company.

Q. Has there been in the past?

A. There has been.

Q. If a customer of Morton Salt Company bought, say, $575 worth of Kleer salt, and $200 worth of round packing salt, and it was shipped in one car, which would make a full carload, would he get a carload discount on the Kleer salt?

A. He would get the same price in a carload, which
400 is our published printed list, as he would by trucking it from the warehouse.

Q. I see, but you testified that a discount is granted on a carload basis.

A. That is right.

Q. And if he buys a carload, he will get that discount?

A. That is right.

Q. And would he get it on Kleer salt?

A. On the entire line, whatever the scale shows.

Q. The scale does not show any discount on carload basis of free running salt, does it?

A. No, sir, so it wouldn't apply, there would be no discount on free running salt.

Q. But he would get a discount on Kleer salt, the brand known as Kleer, is that correct, sir?

A. Whatever is shown in the scale there, whatever that discount is on that scale on the various rates, on the back cover.

Q. If I state to you that the scale LT-18 shows 5-cent discount on Kleer salt, he would get that on that particular carload basis?

A. On a carload basis.

Trial Examiner Purcell: We will recess for five minutes, gentlemen.

(A short recess was taken.)

401 Trial Examiner Purcell: Recess is over.

By Mr. Haslett:

Q. I believe we were talking about, before the recess, Mr. Bringhurst, the granting of a discount on the carload basis. Are you ready to state, or are you in a position to state whether all customers purchasing through the New Orleans office on carload basis have received such discount?

A. Yes, sir.

Q. And that discount is granted and allowed from the list price, is that correct, sir?

A. The printed scale price.

Q. And shows on the invoice?

A. That is correct.

Q. I believe you stated back a while ago on your direct examination that Consolidated Companies, Inc., of Plaquemine, Louisiana, is a customer of Morton Salt Company?

A. Yes.

Q. And they purchase through your office?

A. Yes.

Q. And they do not receive any discounts or allowances of any kind from Morton Salt Company?

A. No quantity discount, no, sir.

Q. Do they purchase on a carload basis?

A. Yes.

Q. And do they receive the carload discounts?

402 A. Yes, sir.

Q. Would it be possible for you to find out for us the volume of purchases of the Consolidated Companies, Inc., for the years 1937, 1938, and 1939 from your books and records?

A. If those records are there, I could probably find them.

Q. I am talking about the dollar volumes.

A. The dollar volumes?

Q. Yes, the dollar volumes of purchases made by the Consolidated Companies, Inc., from the New Orleans office of the Morton Salt Company.

A. I think I can get those figures.

Mr. McBride: 1937, 1938 and 1939?

Mr. Haslett: That is right, and if possible, I would like to have it for 1940, also.

Mr. McBride: That is in dollar volume?

Mr. Haslett: Dollar volume, yes.

By Mr. Haslett:

Q. In order that the record may be clear on the subject of dollar volume of business as to customers, I might state that it will be satisfactory if you want to check with your records the dollar volume of purchases made by the A&P Tea Company from your office as represented by Commission's Exhibit No. 55.

A. Yes, sir.

Q. And if there are any discrepancies, I would like 403 for you to advise me.

A. All right.

Q. Mr. Bringhurst, you heard the testimony of Mr. Kohlmeyer of the Gerde, Newman Company?

A. Yes.

Q. You heard his testimony this morning?

A. Yes.

Q. I believe he testified that at one time he tried to consolidate the purchases of some of his competitors in order to be eligible for this quantity discount.

A. Yes, sir.

Q. Do you know anything about that, sir?

A. He made mention to me some years ago about a quantity discount, and if so, I informed him that if he purchased the requirements of 5,000 cases, we would allow him the 10-cents a case.

Q. And if he pooled the purchases of all of his competitors, would that in any way affect the decision of the Morton Salt Company to grant the 10-cents allowance per case on a 5,000 case purchase?

A. No, sir.

Mr. McBride: Pardon me, if the Examiner please, I am not trying to revert to my objection on the competitors there, but the word "pooled" may be misleading as a matter of merchandising mechanics, and I would like to object to the use of that word, and ask counsel to clarify what he means by "pool."

Mr. Haslett: I would be glad to clarify it, Mr. Examiner.

Trial Examiner Purcell: Very Well.

Mr. Haslett: When I use the word "pool," Mr. Bringhurst, I mean the combined purchases of competitors through one central purchasing office, such as the Gerde, Newman Co. pany.

The Witness: If Gerde, Newman Company placed an order with us for 5,000 cases over a 12 months period, and it was shipped to Gerde, Newman, we invoiced it to him, we would allow him the quantity discounts.

By Mr. Haslett:

Q. But you would not allow the quantity discount if it were shipped to the competitors of Gerde, Newman Company and invoiced to such con.petitors?

A. He would not be meeting our requirements of 5,000 cases within a 12 months period if a number participated.

Q. But, then, the shipment or the designation of the shipment has something to do with it, it is a factor in granting the 5,000 case discount, is that correct?

A. It is our authority to give the 10-cent retainer on 5,000 case buys.

Q. Single buys?

405 A. That is right.

Q. Since June 19, 1936, intermediate to September 18, 1940, inclusive, has the Morton Salt Company through its office in New Orleans offered any promotional scheme or activity to the customers, whereby such customers are paid on one form or the other by Morton Salt Company for such services rendered by the customer?

A. No, sir.

Q. I believe you testified that A&P gets 10-cents allowance per case?

A. That is correct.

Q. On purchases from the New Orleans office?

A. That is correct.

Q. You don't, of your own knowledge, know how the other 5-cents is transmitted to A&P, do you?

A. No, sir.

Mr. McBride: Excuse me, Mr. Examiner, would you identify that as the blue package, in view of the exhibit?

By Mr. Haslett:

Q. When I said "salt" in my last question, Mr. Bringhurst, I meant the blue package, the round package of salt, free running and iodized.

A. Is that a question, may I ask?

Q. Yes, the question was whether or not you knew of your own knowledge whether Morton Salt Company

406 transmitted to the A&P Tea Company an additional 5-cents per case on rounded package salt?

A. I do not have that record.

Q. That wasn't the question, sir. I asked you, did you know of your own knowledge whether it is done?

A. No, sir.

Q. Now, does your company, the Morton Salt Company, in its New Orleans territory, act as sales agent for any other company processing, manufacturing, selling and distributing salt?

A. No, sir.

Q. You act as sales agent only for Morton Salt Company?

A. That is right.

Q. Does Morton Salt Company publish freight rates here in the New Orleans territory?

A. We don't publish freight rates here. Freight rates.

or freight rate lists are published, or rather, furnished to us by our Chicago office.

Q. And have you a current freight rate list for this territory?

A. In my office, yes.

Q. Would you bring a copy with you tomorrow?

A. I would be glad to.

Mr. Haslett: May we go off the record a minute?

Trial Examiner Purcell: Off the record.

407 (A discussion was had off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Bringhurst, do you know of any incident by one of your customers, where one of your customers has requested a lower price for Morton's free running or iodized salt in the round package, and has such request been complied with by your office?

A. Not in years. We have had no request for a lower price on Morton's free running and iodized salt, no, sir.

Q. Have you ever had any of your customers not receiving the 10-cent allowance based upon a 5,000 case purchase, request you to allow them to discount that as allowed to such customers?

A. In recent years, no.

Q. Since 1936?

A. Well, I would have to go back. 1936, I don't recall any instance within that period now. There might have been some request within that period, but it would be four or five or six years ago, if I had such a request.

Q. Your answer would probably be the same as you told Mr. Kohlmeyer?

A. It would be identical.

Q. That is, if he purchased 5,000 cases, he would get the discount?

408 A. As a quantity buyer, if he met all the requirements of a quantity buyer, we would be happy to give him the 10-cents a container.

Q. This morning I asked you if Morton's free running and iodized salt was served to all customers from this office at the same price, and I believe you answered that it was, and you qualified that as to quantity, and also brought out later on as to the $1.60 price for some areas. Do you recall that, sir?

A. Yes.

Q. Now, is there any other price in any area served by the New Orleans office for Morton's free running or Morton's iodized salt?

A. No, sir.

Q. So, the only prices are the quantity prices of $1.50 less 10 or 15-cents, and $1.60, is that correct?

A. Our price is $1.50, $1.60 to LCL and quantity buyers, a quantity discount.

Q. How did you arrive at the 10-cent differential in price between the carload basis and the less than carload basis?

Mr. McBride: If the Examiner please, I will object to that with respect to this witness, in view of his jurisdiction, and in view of the testimony in Chicago as to where the pricing and discount policies of the company are determined.

409 Mr. Haslett: Mr. Examiner, in Chicago I asked Mr. Peterkin, if I recall correctly, if he sold to all customers the free running and iodized salt at $1.50 per case, and he said he did. This is the first time, of course, the first hearing out of Chicago, where it has developed there is another price for free running and iodized salt.

Now, I didn't have a chance to question Mr. Peterkin as to the $1.60 price, because I didn't know anything about it, and he probably doesn't know anything about it, and I wanted to find out.

Trial Examiner Purcell: Don't let's have too much argument on the record.

Mr. Haslett: Let me complete my statement.

Trial Examiner Purcell: All right, but make it short.

Mr. Haslett: I think I am entitled to find out now how the 10-cent differential in price between $1.50 and $1.60 is arrived at, and if this witness can testify to that, I would like to know. If he can't, I can find out by some other method.

Trial Examiner Purcell: Now, let's get off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

410 Mr. Haslett: There is a possibility, Mr. Examiner, that the question I have just propounded to this witness has been answered by Mr. Peterkin. I would like to have an opportunity to examine the record to determine whether or not this question has been answered. If it has

not, I will then pursue it further at a later date during the hearing here in New Orleans.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. What plant of the Morton Salt Company furnishes, or is the source of supply for the sales made by your office, where is it located, sir?

A. Grand Saline, Texas.

Q. And how far is that from here, sir? Do you know?

A. Oh, I can make a guess, four hundred to five hundred miles.

Q. And that comes to you by interstate carriers?

A. Railroad, yes.

Q. Has there ever been an occasion, Mr. Bringhurst, where a price has been changed by your office due to any reason whatsoever without consulting the Chicago office?

A. No, sir.

Q. Has there ever been an occasion where you have allowed your customers a credit for a price fluctuation in the sale of salt?

411 A. We are instructed to quote printed scale prices, and we must adhere to these instructions. Now, if there were any conditions developed, that would have to be determined by our headquarters. I have no authority to change prices or establish prices.

Q. There would then be no competitive adjustment on salt if the market should fluctuate within a particular time as to a particular customer?

A. If there was such a situation, it would be referred to headquarters.

Q. And the authority of such an adjustment would have to come from the Chicago office?

A. Yes.

Q. Where is the nearest branch or warehouse of Morton Salt Company located, outside of New Orleans?

A. Grand Saline, Texas.

Q. Branch sales office?

A. Oh, a branch sales office?

Q. Yes.

A. Dallas, that is 600 miles, and Nashville, I don't know that distance.

Mr. McBride: Excuse me, Mr. Examiner, I have a recollection that he was asking him with respect to warehouses, or is it branch houses? I am a little confused.

By Mr. Haslett:

412 Q. Where are the branch offices located?

A. The branch offices?

Q. Yes, sales offices?

A. I don't know the distance of the Dallas office or the Nashville office, which is the closest office. Dallas, I imagine, is about 500 or 600 miles. The distance from Nashville, I don't know.

Q. Do you have an overlapping of sales effort by either of those two offices that you named?

A. No, sir.

Q. Conflicting with your own sales efforts?

A. No, sir.

Q. You have salesmen covering the same territory from the Nashville office as covered by the New Orleans office?

A. No, sir.

Q. Have you any customers who purchase in less than a case of Morton's salt? Do you break a carton for any customers?

A. No, sir.

Q. Has that ever happened?

A. Not to my knowledge.

Q. Are there any limitations placed upon the volume that the customer must order before the sale is made to such customer?

A. We do not tell him how much to buy or what
413 quantity he should buy.

Q. He has to purchase over a case, you wouldn't break a case for him?

A. No, we wouldn't break a case, I don't think, but he understands that.

Q. But a wholesaler can buy from one case up and get the $1.50 price, is that correct?

A. Yes, sir.

Q. Are all prices f. o. b. New Orleans?

A. F. O. B. Works.

Q. Works?

A. Yes.

Q. Now, when you say "works," you mean the plant?

A. The plant.

Q. There is testimony in the record and exhibits showing the $1.50 price on less than carload lots, that is correct, isn't it?

A. On what grade of salt?

Q. Morton's free running and iodized salt.

A. $1.50 blanket price.

Q. That is right, and that is where they pick it up at the warehouse of Morton Salt Company located in New Orleans?

A. Or carloads.

Q. Or carloads, that is correct, isn't it?

A. That is correct.

414 Q. Has there ever been an occasion where Morton's salt has sold in round package, free running salt, f. o. b. New Orleans plus the freight to a particular point, and where the freight is shown on the invoice? I am asking whether or not there has been such a case.

A. Not to my knowledge.

Q. You classified your various customers this morning as the largest users of salt, such as packers and canners, is that correct, sir?

A. That is correct.

Q. And one of them was a shrimp packer, I believe?

A. That is right.

Q. You have numerous customers who buy salt in large quantities who use it in the processing of other materials, is that correct, sir, or other products?

A. In the New Orleans office?

Q. Yes, sir.

A. No large industrial buyers.

Q. No large industrial buyers?

A. No, sir.

Q. Only the canners?

A. Yes, that practically covers it.

Q. You haven't any customers who use large quantities of salt in the curing of hides or the glazing of pottery, or that type of industry?

415 A. You say, large quantities?

Q. Yes.

A. I should say no.

Q. When I say "large quantities," I mean over a carload.

A. No, the people might buy one carload, and then maybe three or four months buy another one. I wouldn't consider them large users of salt.

416 Room 906,
Pere Marquette Building,
New Orleans, Louisiana,
Thursday, April 23, 1942

Met, pursuant to adjournment, at 10:00 a.m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room. 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

417 Mr. Haslett: Mr. Kurzweg.

V. J. KURZWEG was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Kurzwig?

A. My name is V. J. Kurzweg, K-u-r-z-w-e-g.

Q. Where do you reside, sir?

418 A. Plaquemine, Louisiana.

Q. And what business are you engaged in?

A. Wholesale grocery business.

Q. And how long have you been in the wholesale grocery business?

A. Forty-two years.

Q. With what company are you associated?

A. I am president of the Consolidated Companies, Inc.

Q. And where is the main office of that company?

A. Plaquemine.

Q. Plaquemine, Louisiana?

A. Plaquemine, Louisiana.

Q. What is the business of the Consolidated Companies, Inc.?

A. Wholesale grocers.

Q. Selling salt, groceries and allied products?

A. Yes, sir.

Q. At wholesale?

A. Wholesale.

Q. And you sell through retail grocery stores?

A. Yes, sir.

Q. And have you more than one unit or one wholesale grocery store?

A. Yes, we have 22.

Q. You have 22, sir?

A. Yes, sir.

419 Q. And where are they located?

A. Throughout the state of Louisiana.

Q. They are all within the state of Louisiana?

A. Yes, sir.

Q. I presume that you have competitors, sir?

A. Yes, sir.

Q. And you competitors are other wholesale grocery men selling groceries and allied products to the retailers, sir?

A. Yes, that is right.

Q. And could you name some of your competitors in New Orleans?

A. Gerde, Newman, Albert Mackie Company, the H. T. Cotham & Company, Kohlmann Brothers & Sugarman, Inc., Menard Company, Spot Cash Wholesale Grocery Company.

Q. Any others, sir, if you can recall? Would the Imperial Trading Company be a competitor?

A. Yes, the Imperial Trading Company.

Q. And then in addition to those that you have named here in New Orleans, you also have competitors of the same type in all other localities that you operate in, in the state of Louisiana?

A. Practically all points.

Q. Does your company purchase salt from the Morton Salt Company?

A. Yes, sir.

420 Q. Does your company purchase round package free running salt from the Morton Salt Company?

A. Yes, sir.

Q. And in addition to the round package, it purchases other grades of salt?

A. Square packages and bulk.

Q. Does your company purchase on a carload basis?

A. Yes, sir.

Q. Now, my next question will have reference to the round package salt, and I will ask you this: Whether or not your company receives any discount allowance of any sort from the Morton Salt Company on the round package salt?

A. Seven and one-half cents per case.

Q. Seven and one-half cents per case?

A. Yes, sir.

Q. And what is the price that you pay per case for it, sir?

A. $1.50 per case in carloads, and $1.60 in less than carload lots.

Q. Would it be less 7½-cents per case in both instances?

A. Yes.

Q. So, $1.50 a case would cost $1.42½?

A. In carlots.

Q. In carlots, and in less than carlots it would be—

A. $1.52½.

421 Q. That would be $1.60 less 7½-cents, or $1.52½?

A. That is right.

Q. Does your company purchase 5,000 cases of Morton's free running salt during any twelve consecutive months' period?

A. We don't buy that much free running salt from Morton.

Q. You buy less than that?

A. Yes.

Q. Does your company receive a discount on the square package, what is known as Kleer salt, K-l-e-e-r?

A. I really don't know whether we do or not. I do know that we receive concessions on that size salt from some of the concerns.

Q. But you don't know whether you receive them from Morton or not?

A. No, sir.

Q. Could you state the wholesale price for Morton's round package free running salt charged by your firm from its branch here in New Orleans?

A. No, sir.

Q. You don't know that, sir?
A. No, sir.
Q. Could that be determined by calling?
A. Mr. Hebert is manager of the New Orleans business.
Q. And what is the name of the branch here in New Orleans?
A. Goodman & Beer Company.
422 Q. Goodman & Beer?
A. Yes.
Q. And that is associated with your company?
A. It is just the trade name of our operations down here; it is part of the Consolidated Companies, Inc.
Q. Do you know the price charged by any of your particular branches in the state of Louisiana for the sale of Morton's salt to the retailers?
A. No, sir.
Q. That would be left entirely up to your branch managers?
A. The managers, yes.
Q. Would they have the power to fluctuate that price in accordance with the market fluctuations?
A. Yes, under competitive conditions.
Mr. Haslett: Mr. Reporter, I hand you herewith a document and ask that it be marked for identification as exhibit 58.
(The document referred to was marked "Commission's Exhibit 58" for identification.)

By Mr. Haslett:

Q. Mr. Kurzweg, I hand you herewith what has been marked for identification as Commission's exhibit No. 58, and ask you to state what it is, if you know, sir?
A. This is an invoice on a carload of salt from the Morton Salt Company that was made on the B&M, 71962, on August 21, 1941, made to our St. Landry Wholesale
423 Grocery, at Opelousas, Louisiana.
Q. And St. Landry Wholesale Grocery Company is a branch of Consolidated Companies, Inc.?
A. Yes, sir.
Mr. Haslett: I offer it, Mr. Examiner.
Trial Examiner Purcell: Any objections?
Mr. McBride: No objections.
Trial Examiner Purcell: There being no objections, the instrument described by the witness as Commission's ex-

hibit 58 for identification will be received in evidence and marked Commission's exhibit 58.

(The invoice referred to heretofore marked for identification "COMMISSION'S EXHIBIT 58" was received in evidence.)

By Mr. Haslett:

Q. Mr. Kurzweg, I again hand you Commission's exhibit No. 58, and ask you to state whether or not, if you know, sir, the Consolidated Companies, Inc., received a carload discount of approximately 5 per cent on the Kleer table salt shown at the top of Commission's exhibit No. 58?

A. I don't know.

Q. You don't know, sir?

A. No.

Q. You don't know whether they did or did not?

424 A. No, sir.

Q. It doesn't show on the invoice that they did, does it, sir?

A. No, sir.

Q. It doesn't show any discount on the invoice?

A. No, sir.

Mr. Haslett: Mr. Reporter, I hand you herewith three documents and ask that you mark them for identification as Commission's exhibit No. 59-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 59-A, 59-B, and 59-C," for identification.)

By Mr. Haslett:

Q. Mr. Witness, I hand you herewith what has been marked for identification as Commission's exhibit No. 59-A, B, and C, and ask you to state what they are, if you know, sir, by their alphabetical number? What is Commission's Exhibit 59-A?

A. This covers an invoice of 25 cases of Morton's free running salt and 25 cases of Morton's iodized salt, dated January 31, made to our Plaquemine house.

Trial Examiner Purcell: January 31st, what?

The Witness: January 31, 1939, made by our Plaquemine house, invoice No. 9110, in the amount of $80.

By Mr. Haslett:

Q. What is Commission's exhibit for identification No. 59-B?

425 A. This is the record of our clerk having received it at Plaquemine.

Q. And Commission's exhibit 59-C for identification?

A. That is the transporation company's freight bill covering these 50 cases of salt.

Q. And under what date is 59-C?

A. January 31, 1939.

Mr. Haslett: I offer them, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, Commission's exhibit 59-A, B, and C will be received in evidence and marked Commission's exhibit 59-A, B, and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 59-A, 59-B, and 59-C" were received in evidence.)

Trial Examiner Purcell: The witness, in describing Commission's exhibit No. 58 in evidence, gave the number of the invoice as 71962. This should have been 62633. The former number being the car number, and not the invoice number.

By Mr. Haslett:

Q. Mr. Kurzweg, I again hand you Commission's exhibit 59-A, B, and C, and ask you to state whether or not your company received on the invoice as represented by Commission's Exhibit No. 59-A, a 7½-cent per case allowance from the Morton Salt Company?

426 A. Our records indicate that we did receive 7½ cents a case.

Q. Now, was the freight prepaid on that shipment, sir?

A. Yes.

Q. It would not, then, be deducted from the bill itself?

A. No, sir.

Mr. Haslett: May we have just a moment off the record, sir?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Reporter, I hand you herewith two documents and ask that they be marked for identification as Commission's exhibit No. 60-A and 60-B.

(The documents referred to were marked "Commission's Exhibit 60-A and 60-B" for identification.)

By Mr. Haslett:

Q. Mr. Kurzweg, I hand you what has been marked for identification as Commission's exhibit 60-A and B, and ask you to state what 60-A for identification is, sir?

A. That is an invoice from the Morton Salt Company, their invoice No. 20868, covering a carload of salt made to our St. Landry Wholesale Grocery Company at Opelousas, Louisiana, in car No. 80265, Texas & Pacific, dated December 30, 1940.

427 Q. Now, will you identify Commission's exhibit No. 60-B?

A. It is a bill of lading coverng this same car from Grand Saline, Texas, dated December 30, 1940.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described by the witness will be received in evidence and marked Commission's exhibit 60-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 60-A and 60-B" were received in evidence:)

By Mr. Haslett:

Q. Mr. Kurzweg, I again hand you Commission's exhibit 60-A and B, and ask you to state whether or not the freight was paid by the Consolidated Companies and deducted from the face of the invoice?

A. Yes, sir, it shows that we deducted $122.10 for freight.

Q. Now, was the order for that particular car placed through any brokerage company?

A. Through Progressive Brokerage Company.

Q. Is that at Plaquemine, Louisiana?

A. Yes, sir.

Q. And the Progressive Brokerage Company is an agent for the Morton Salt Company?

428 A. Yes, sir.

Mr. McBride: If the Examiner please, I must ask that the word "agent" be stricken.

Mr. Haslett: I am willing to concede that the word "agent" has no subtle meaning, but that the Progressive Brokerage Company is a broker for the Morton Salt Company.

By Mr. Haslett:

Q. Is that correct, sir?

A. Yes, sir.

Q. And you received from the Morton Salt Company an allowance of 7½-cents per case for the Morton's free

running and Morton's iodized salt, as shown on exhibit 60-A, is that correct, sir?

A. Yes, sir.

Q. One question I wanted to ask you that seemed to have slipped my mind before when we were talking about competitors, Mr. Kurzweg. At one time, was the C. D. Kenny Company a competitor of yours in the New Orleans territory?

A. Yes.

Q. And they sold salt and groceries, and allied products to the retailers in competition with your branch here?

A. Yes, sir.

Q. Is Morton's salt resold by your company from all of its branches in the states of Louisiana?

A. I think so.

Q. And you handle all types and grades of salt?

429 A. Yes, sir.

Q. In bags, 100-pound bags?

A. Bags and cartons.

Q. And in addition to that, you handle what is known in the trade as 5-cent salt?

A. Yes, sir.

Q. That is that Kleer brand, is it?

A. Yes.

Q. When I say 5-cents, that is the price it is resold to the consumer for, is that correct?

A. Yes.

Q. Does your company have any retail stores affiliated with it, sir?

A. Some of our interests, some of our stockholders, own stock in retail grocery businesses.

Q. But they are not directly connected with your company?

A. No corporate connection.

Q. No corporate connection?

A. No.

Q. And no interlocking directorates?

A. No, sir.

Q. Does your company have anything to do with the retail stores of which some of the stockholders own stock in both companies?

A. Yes, we sell them quite a large amount of merchandise.

430 Q. I mean, but you have nothing to do with the practices and policies of the company?

A. No, sir.
Q. What is the name of that company, sir?
A. Capitol Stores, Inc.
Q. And where do they operate, sir?
A. Their main office is in Baton Rouge.
Q. I see.
A. They operate in New Orleans, Baton Rouge, Hammond, Donaldsonville and Tribodeaux, Louisiana.
Q. They are retail stores selling direct to the consumer?
A. Yes, sir.
Q. And they do purchase some of their products from your company?
A. Yes, sir.
Q. They are not required to purchase all of their products from your company?
A. No, sir.
Q. Or any of them, is that correct?
A. No, sir.
Q. It is just another customer to you?
A. Yes, sir.
Q. The prices at which the Capitol Stores, Inc., resell their various commodities to consumers are not controlled by your company in any way, sir?
431 A. No, sir.
Q. They are not fixed by any officer of your company?
A. No, sir.
Q. Would your business in any way be affected by the sale of salt, if a competitor of yours was selling the round package salt to your customers at a cent cheaper than the price which you were charging for it?
A. Oh, yes, it would materially affect us.
Q. Any differential in price would affect your business?
A. Yes.
Q. The bulk of your purchases from the Morton Salt Company are on a carload basis, sir?
A. Yes, sir.
Q. And the only time that you purchase less than a carload lot is where you get a need or have a quick need for a particular brand of salt, is that correct, sir?
A. For this free running salt; all other salt is bought in straight carlots.
Q. The free running, on occasions, is bought in less than carload lots?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. McBride. Your witness, sir.

Cross-Examination by Mr. McBride.

432 Q. Mr. Kurzweg, I have only one or two questions. I believe you stated in answer to one of Mr. Haslett's questions that there are a number of competing wholesale houses located around the state of Louisiana who are competitors of your branch houses?

A. Yes, sir.

Q. You wouldn't know, would you, Mr. Kurzweg, whether or not those competing wholesale houses handle Morton's salt or not, would you?

A. Yes, I know some of them do.

Q. Some of them do, but you wouldn't know offhand whether they do or don't, whether they handle particular lines from time to time, would you?

A. No, sir, I wouldn't know that.

Q. Now, with respect to the branches of Consolidated, do you know of your own knowledge whether or not all of the branches handle all of Morton's full line of salt, or all of them handle all of the blue package salt?

A. Our branches are privileged to handle anything they want, and if there is a demand for any particular brand of salt, why, they handle it.

Q. But they may or may not all be handling a given brand of Morton salt?

A. That is correct, they can or they can leave it out.

Q. So, conceivably, half of them might be handling Morton salt at a given time and half of them might not, is that true?

433 A. Yes.

Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Kurzweg, are you in a position to say that at some time, or during the period between June 19, 1936, and September 18, 1940, that all of your branch warehouses have at some time during that period handled Morton salt, Morton Salt Company's salt?

A. I would think so, sir.

Mr. Haslett: I think that is all, sir.

Trial Examiner Purcell: Thank you very much.

(Witness excused.)

Mr. McBride: Mr. Examiner, I waited until Mr. Haslett had offered all of the documentary evidence, and I should now like to make my usual request for a withdrawal for photostating.

Trial Examiner Purcell: Granted.

Mr. McBride: With respect to the Commission's exhibits 58 through 60-B.

Mr. Haslett: I have no objection.

Trial Examiner Purcell: The request is granted.

Mr. Haslett: May we have a few moments recess?

434 Trial Examiner Purcell: Yes.

(A short recess was taken.)

Mr. Haslett: Mr. Examiner, before we begin, I would like to recall to the stand just for one moment, Mr. Kurzweg.

Trial Examiner Purcell: Very well.

V. J. KURZEG was thereupon recalled as a witness for the Commission, having been previously duly sworn, and testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Kurzweg, I hand you again, sir, Commission's exhibit 59-A, B, and C, and ask you to state whether Commission's exhibit 59-A is a representative invoice for less than carload purchases from the Morton Salt Company?

A. Yes, sir, all of the invoices are similar to this, as to price and the form.

Q. Is that also true as to Commission's exhibit 58?

A. The same thing applies as to the carload invoices.

Q. And that is similar to other invoices coming from the Morton Salt Company?

A. Yes.

Q. I hand you Commission's exhibit 60-A, and ask you to state whether that is similar to other invoices coming from the Morton Salt Company?

435 A. Yes, sir.

Q. And they come to you in the regular course of your business?

A. Yes, sir.

Q. They came from the files of the Consolidated Companies, Inc.?

A. Out of our office at Plaquemine.

Q. And you furnished them in compliance with my request?

A. Yes, sir.

Mr. Haslett: Thank you. Do you have any questions?

Mr. McBride: I would just like to check on the witness' statement before he is dismissed.

I think I will let it stand without any further cross-examination.

Mr. Haslett: That is all, Mr. Kurzweg, thank you very much.

(Witness excused.)

Mr. Haslett: Mr. Hebert.

J. I. HEBERT was thereupon called as a witness for the Commission, having been first duly sworn, and testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Hebert?

436 A. A. J. Hebert, H-e-b-e-r-t.

Q. And where do you reside, sir?

A. 2015 Calhoun Street.

Q. Is that in the city of New Orleans?

A. Yes.

Q. And what business are you engaged in?

A. Manager of Goodman & Beer, branch, Consolidated Companies, Inc., wholesale grocers.

Q. And the business of Goodman & Beer is selling groceries and allied products to the retailers, sir?

A. Yes, sir.

Q. And where is the branch of the Consolidated Companies, Inc., known as Goodman & Beer, located?

A. 412-430 South Front Street, New Orleans.

Q. And you are manager of that branch?

A. Yes, sir.

Q. Do you know the witness that was on the stand previous to this time, Mr. Kurzweg?

A. Yes, sir.

Q. And what position does he hold with the Consolidated Companies, Inc.?

A. He is the president of Consolidated Companies, Inc., domiciled at Plaquemine, Louisiana.

Q. And is he your immediate superior, sir?

A. Yes, sir.

437 Q. Does the branch of Consolidated Companies, Inc., known as Goodman & Beer, of which you are manager, handle any of the Morton Salt Company's products?

A. Yes.

Q. What type of products are sold by your company that are purchased from the Morton Salt Company?

A. We sell their pack salt and Morton's free running and bakers' barrel salt.

Q. When you say "pack salt," what do you mean by that?

A. We handle some of their, what we call one and one-half pound competitive package.

Q. Is that the 5-cent salt, sir?

A. In some cases, it is sold for 5-cents, but plenty of times it is sold for less.

Q. But it is generally known in the trade as 5-cent salt?

A. Yes, sir.

Q. Kleer brand, is that the name of it?

A. Kleer brand, yes, sir.

Q. And have you any competitors?

A. A great many, yes.

Q. And they are located in New Orleans?

A. Yes.

Q. And would you name some of those competitors?

A. Albert Mackie Grocery Company, Kohlmann Brothers & Sugarman, Imperial Trading Company, Witherspoon Brothers, Jackson Wholesale,—I can name quite a few 438 more if you want them.

Q. Was C. D. Kenny Company ever a competitor of yours in the New Orleans territory?

A. Yes, sir.

Q. Up until the time that they discontinued doing business in this territory, they were competitors of yours?

A. Yes, sir.

Q. And they sold groceries, salt, and allied products?

A. Yes, sir.

Q. To the retailers at the same time that you were selling to the retailers?

A. Yes, sir.

Q. Will you state the method and procedure of placing orders with Morton Salt Company for products to be shipped to your branch, Goodman & Beer, here in New Orleans?

A. Our order clerks have instructions to draw orders on their local warehouse for anything that they need at any time.

Q. And do the trucks of Goodman & Beer call at the local warehouse of Morton Salt Company and there obtain their supply of salt?

A. Yes, sir.

Q. And they bring it back to the warehouse of the Goodman & Beer Company?

439 A. Yes, sir.

Q. At which time it is resold and then redistributed to your various customers?

A. Yes, sir.

Q. Does the Goodman & Beer Company purchase on a carload basis?

A. No, sir.

Q. They do not, sir?

A. No, sir.

Q. They purchase all of their requirements direct from the warehouse here in New Orleans?

A. Yes.

Q. What is the general retail price of Morton's free running round package salt by your company to the retailers?

A. I would say the average price is about $1.65.

Q. When you say "average," do you mean there are some other prices besides the $1.65 price?

A. Yes, we have as low as $1.55, and possibly as high as $1.70 or $1.75.

Q. I see, and what would be the reason for the $1.55 price?

A. The cash wholesale price brings it down at times, and in competition it just holds you down in plenty of cases.

Q. Then, a number of factors may enter into the price at which the salt would be resold to retailers, is that correct, sir?

440 A. Yes, sir.
Q. Competition would be one of them?
A. Yes.
Q. And credit would be one?
A. Yes, sir.
Q. And them calling for the product at your particular warehouse, that would be a factor in the price of the salt?
A. Yes, sir.
Q. Could you name the customers of the Goodman & Beer Company that paid $1.55 a case for Morton's free running salt?
A. Not offhanded, no, sir.
Q. Are there many?
A. No, I wouldn't think there would be very many.
Q. Would you say a greater majority of your customers pay $1.65 a case?
A. Yes, very much so.
Q. Then, where you have a few customers that pay more than $1.65 a case?
A. Yes, sir.
Q. What would be the reason for that, sir?
A. That is possibly on account of the haul, or the credit rating.
Q. A number of factors enter into that?
A. Our list price is $1.75.
Q. Your list price is $1.75?
441 A. That is our listed price.
Q. Does your company, or the branch of which you are manager, of the Consolidated Companies, Inc., known as Goodman & Beer, receive any discounts or allowances from the Morton Salt Company?
A. Seven and one-half cents a case on the Morton free running salt.
Q. And would that be true on Morton's iodized round package salt, as well?
A. The same, yes.
Q. Do you receive any discount on the Kleer salt?
A. The records didn't indicate any, no.
Q. I believe you stated that you purchase in barrels for resale to bakers?
A. Yes, sir.
Q. Does the branch of the Consolidated Companies, Inc., known as Goodman & Beer, receive any discounts from Morton Salt Company on such purchases?

A. No, sir.

Q. Do you also obtain your supply of buk salt, that is, in 100-pound bags and barrels, from the warehouse of Morton Salt Company?

A. Yes.

Q. Then, am I correct when I say that all supplies of the Goodman & Beer Company in the salt line, or pur-
442 chases from the salt company are obtained from the warehouse of the Morton Salt Company here in New Orleans?

A. The salt that we buy from the Morton Salt Company, yes.

Mr. Haslett: Mr. Reporter, I hand you herewith four documents and ask that you mark them for identification as Commission's exhibit 61-A, B, C, and D.

(The documents referred to were marked "Commission's Exhibit 61-A, 61-B, 61-C, and 61-D" for identification.)

By Mr. Haslett:

Q. Mr. Hebert, I hand you herewith what has been marked for identification as Commission's exhibit 61-A, B, C, and D, and ask you to state what Commission's Exhibit 61-A for identification is, sir, if you know?

A. 61-A is an invoice from the Morton Salt Company, dated July 3, 1940, invoice No. 2705, to Goodman & Beer for 25 cases of Morton's free running salt.

Q. Now, I will ask you to turn the page and identify Commission's exhibit 61-B.

A. That is our order No. 4428, drawn on the Morton Salt Company's warehouse for 25 cases of Morton's plain salt.

Q. And Commission's exhibit 61-C?

A. That is the Morton Salt Company's delivery order, 3024, dated July 3, 1940, covering the same 25 cases of salt.

Q. And Commission's exhibit 61-D?

A. That is a credit memorandum of Morton Salt Com-
pany.

443 Q. A credit memorandum, do you mean, for the Morton Salt Company?

A. Yes, dated July 5, 1940, for adjustment on invoice 2705.

Q. And invoice 2705 is Commission's exhibit 61-A for identification?

A. Yes, sir, and it amounts to 7½-cents a case.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments heretofore described will be admitted in evidence and marked by the reporter as Commission's exhibit 61-A, B, C and D.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 61-A, 61-B, 61-C and 61-D" were received in evidence.)

By Mr. Haslett:

Q. Now, Mr. Hebert, I hand you again Commission's exhibit 61-A, B, C and D, and ask you to state whether that is representative of the invoices passing between the Morton Salt Company and the Goodman & Beer branch of the Consolidated Companies here in New Orleans, with its various attachments?

A. Yes, sir.

Mr. McBride: Mr. Examiner, may I object, to the extenf of identifying with respect to Morton's free run-
444 ning salt, because the witness has testified that he purchased other types of salt from Morton Salt Company.

Mr. Haslett: I can clear that up, Mr. Examiner, by asking the witness this:

By Mr. Haslett:

Q. Is that representative of the invoices on Morton's free running salt of purchases from the Goodman & Beer branch of the Consolidated Companies from the Morton Salt Company?

A. Yes, sir.

Mr. McBride: No objection.

Mr. Haslett: Mr. Reporter, I hand you herewith and ask you to mark this document for identification as exhibit 62-A, B, C, D, E, and F.

(The documents referred to were marked "Commision's exhibit 62-A, 62-B, 62-C, 62-D, 62-E, and 62-F," for identification.)

Trial Examiner Purcell: Mr. McBride, having reference to Commission's exhibit 61-A through D, for identification, are you satisfied with the clearng up of the record?

Mr. McBride: I am, yes.

Trial Examiner Purcell: Do you have any objection to the introduction of these instruments in evidence?

Mr. McBride: No, sir.

Trial Examiner Purcell: There being no objection, 445 the instruments described will be admitted in evidence and marked by the Reporter as Commission's Exhibit 61-A, B, C, and D.

By Mr. Haslett:

Q. Mr. Hebert, I hand you what has been marked for identification as Commission's Exhibit No. 62-A through F, inclusive, and ask you to identify Commission's Exhibit 62-A.

A. Commission's exhibit 62-A is an invoice from Morton Salt Company, New Orleans, dated August 11, 1941, invoice No. 4865, covering one barrel of Morton flake bakers' salt, 25 cases of Morton's free running salt. Exhibit 62-B is Goodman & Beer's order No. 2777, dated August 8, 1941, for 25 cases of Morton's free running salt. Exhibit 62-C is the Morton Salt Company delivery ticket, dated August 11, 1941, for 25 cases of Morton's salt. Exhibit 62-D is Goodman & Beer's order No. 1735, dated August 11, 1941, for one barrel of bakers' flake salt. Exhibit 62-E is Morton Salt Company's delivery ticket, dated August 11th, covering one barrel of Morton's flake salt. Exhibit 62-F is a credit memorandum from Morton Salt Company, New Orleans, dated August 11, 1940, covering adjustment on invoice 4865 for $1.88, or 7½ cents a case.

Q. That would be only on the free running salt?

A. Yes, sir.

Mr. Haslett: I offer it, Mr. Examiner.

446 Mr. McBride: No objection.

Trial Examner Purcell: There being no objection, the instrument described by the witness will be received in evidence and marked by the reporter as Commission's exhibit No. 62-A, B, C, D, E, and F.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 62-A, 62-B, 62-C, 62-D, 62-E, and 62-F" were received in evidence.)

By Mr. Haslett:

Q. Mr. Hebert, I again hand you Commission's exhibit 62-A, B, C, D, E, and F, and ask you to state whether or not Commission's exhibit 62-A is representative of the invoices passed between Morton Salt Company and your branch of the Consolidated Companies, Inc., for the commodities shown thereon?

A. Yes, sir.

Q. And would that also be true as to the other exhibits, that they are representative of documents that are used in the general course of your business in ordering commodities from the Morton Salt Company?

A. Yes, sir.

Mr. McBride: If the Examiner please, I would object to that for the purpose of clarity, because the credit memorandum has reference only to one type of salt, and not to commodities generally.

447 By Mr. Haslett:

Q. I will refer you to Commission's exhibit 62-F and ask you to state whether that is the general type of credit memorandum from the Morton Salt Company on Morton's free running and Morton's iodized salt only?

A. Yes, sir.

Trial Examiner Purcell: And that referred only to invoice 4865?

The Witness: Yes, sir.

Trial Examiner Purcell: But it is typical of similar ones?

The Witness: Yes, sir.

Trial Examiner Purcell: On other invoices?

The Witness: Yes.

Trial Examiner Purcell: All right.

Mr. Mr. Haslett:

Q. Now, Mr. Hebert, the documents known as Commission's exhibit 62-A to F were furnished in accordance with my request, is that correct, sir?

A. That is right.

Q. And they were furnished out of the files of the Goodman & Beer branch of the Consolidated Companies, Inc.?

A. That is correct.

Q. Mr. Hebert, if a competitor of the Goodman & Beer Company was selling Morton's salt to your customers
448 at a cent in price more than the price which you were charging for Morton's free running salt, would that in any way affect your business?

A. Yes.

Q. Any declining differential in price would affect it, is that true?

A. Yes.

Q. Are there any retail stores affiliated with the Goodman & Beer branch of the Consolidated Companies, Inc.?

A. No, sir.

Q. Is Capitol Stores one of your customers?

A. We sell them a little stuff, yes.

Q. You don't sell them all of their requirements?

A. No, sir, they operate their own warehouse and buy on just the same basis we do from all sources, of course.

Q. Does the Goodman & Beer branch of the Consolidated Companies, Inc., purchase 5,000 cases of free running salt from the Morton Salt Company during any twelve consecutive month periods?

A. No, I think not.

Q. Do you know of any time they have ever purchased that much salt?

A. No, sir.

Q. It is always less than 5,000 cases?

A. Yes, sir.

449 Q. Do you know of any instances where Goodman & Beer have lost customers on salt to the C. D. Kenny Company?

A. Not specifically, no, sir.

Q. They were a competitive factor in this market?

A. Yes, sir.

Q. An important factor?

A. When they were here, yes.

Mr. Haslett: I think that is all, Mr. McBride, your witness, sir.

Mr. McBride: No questions.

(Witness excused.)

Mr. McBride: Mr. Examiner, I should like to make my usual request to withdraw Commission's exhibits 61-A through 62-F, inclusive, the originals to be returned thereafter.

Trial Examiner Purcell: Any objection?

Mr. Haslett: No objection, Mr. Examiner.

Trial Examiner Purcell: It will be granted.

Mr. Haslett: I will recall Mr. Bringhurst to the stand at this time.

ROBERT GEORGE BRINGHURST was thereupon recalled as a witness for the Commission, having been previously duly sworn, testified further as follows:

Direct Examination by Mr. Haslett (Continued).

450 Q. Mr. Bringhurst, during your direct examination on yesterday, I requested that you check the figures as shown on Commission's exhibit No. 57, being the purchases of the Great Atlantic & Pacific Tea Company headquarters here in New Orleans. Have you had an opportunity to check those figures?

A. Yes, sir.

Q. Have you found them substantially correct, sir?

A. Yes, sir.

Q. And I now hand you Commission's exhibit No. 57, and ask you to state if there are any material changes to be made on that exhibit which would be in accordance with the records of the Morton Salt Company?

A. Changes in the total amount?

Q. That is right, sir, on the monthly basis.

A. I don't see any changes.

Q. So, there would not be any material changes?

A. I shouldn't think so, as to the total number of cases.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 63.

(The document referred to was marked "Commission's Exhibit 63" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say that it is stipulated between counsel for the respondent and
451 counsel for the Commission that the figures represented on Commission's Exhibit No. 63 for identification are true and correct figures appearing on the books and records of the Morton Salt Company of sales made to the branch of the C. D. Kenny Company, located in New Orleans, for the years 1936, 1937, 1938, 1939 and 1940, and 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: There being no objection, the instrument described in the stipulation between counsel will be received in evidence and marked Commission's Exhibit No. 63.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT No. 63", was received in evidence.)

By Mr. Haslett:

Q. Mr. Bringhurst, I hand you Commission's exhibit No. 63, and ask you to state whether or not if at any time, during any of the years as shown on Commission's exhibit 63 the C. D. Kenny Company's branch at New Orleans purchased in excess of 5,000 cases of free running salt per year?

A. No, sir.

Q. And C. D. Kenny was a customer of Morton Salt Company?

A. Yes.

Q. And did they receive a discount of 10 cents per case
452 on Morton's free running and iodized salt?

A. Not to my knowledge.

Q. You wouldn't say they didn't receive it, would you?

A. No, they didn't receive it. I have no record of them receiving it.

Q. As far as you know?

A. That is right, that is all I could testify.

Q. Was the C. D. Kenny Company's branch at New Orleans billed by the New Orleans office of the Morton Salt Company?

A. Yes.

Q. And were the bills paid to the New Orleans office of the Morton Salt Company by the C. D. Kenny branch in New Orleans?

A. That, I don't recall. We received the payment here at New Orleans for billing.

Q. And you don't know whether it was paid to the Morton Salt Company through the main office of the C. D. Kenny Company or through the branch office?

A. That, I don't recall.

Q. You are not in a position to testify as to the activities of the main office of the Morton Salt Company in making that discount or allowance to C. D. Kenny on all of its purchases, are you?

A. The Morton Salt Company determines its policies, I am not concerned.

453 Q. Just answer my question, please.

A. No, sir.

Mr. Haslett: Mr. Reporter, I hand you herewith three documents and ask that they be marked for identification as Commission's Exhibit 64-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 64-A, 64-B, and 64-C" for identification.)

Mr. Haslett: Is it stipulated, Mr. McBride, that the documents marked for identification as Commission's Exhibit 64-A, B, and C, is a true and correct freight rate book with its supplement designated as "List No. 29" under date of April 15, 1940, for the Louisiana territory?

Mr. McBride: For the state of Louisiana.

Mr. Haslett: For the state of Louisiana?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as COMMISSION'S EXHIBIT 64-A, B, and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 64-A, 64-B, and 64-C" were received in evidence.)

By Mr. Haslett:

Q. Mr. Bringhurst, I hand you Commission's Ex-
454 hibit 64-A, B, and C, and ask you to state whether or not when less than carload sales are made by Morton Salt Company's branch at New Orleans, the freight rates that appear therein are applied to such less than carload shipments?

A. We don't use this freight rate, or rates, we have carload price at the warehouse, and we apply that at the warehouse for all shipments that move out from the warehouse in carload, and carload price applies f. o. b. the warehouse.

Q. But there has been testimony here where there has been a shipment made from the warehouse to the outlying district, and where the commodity, Morton's Salt's free running product has been shipped from the warehouse to the towns outside of New Orleans?

A. That is correct.

Q. And the freight has been charged thereon, is that correct, sir?

A. We make the price f. o. b. our warehouse in New Orleans.

Q. I see, sir.

A. And whatever charges follow, that is up to the buyers.

Q. I now hand you Commission's Exhibit No. 59-A, B, and C, and ask you to state whether the charges on that shipment of 50 packages of Morton round package salt was prepared by the Morton Salt Company at the New Orleans office?

A. This paper indicates the freight was prepaid by this office.

455 Q. By the Morton Salt Company?

A. Yes, sir. It indicates that the freight was paid by this office.

Q. And if you will look at Commission's Exhibit 59-C, the next to the last on there, that shows that the freight was prepaid and the amount of freight, does it not, sir?

A. 59-C?

Q. Yes.

A. This document shows the stamped "prepaid".

Q. And it shows the amount thereon, doesn't it?

A. $8.26, yes.

Q. Now, when you arrived at the figure of $8.26, was the document known as Commission's Exhibit 64-A, B, and C, used to arrive at that figure?

A. That rate list?

Q. Yes.

A. No, sir.

Q. How was that figure arrived at?

A. We make LCL deliveries at $1.60 on Morton's free running and Iodized, delivered. The price at the warehouse is $1.50 f. o. b. the warehouse.

Q. I think the record is very clear on that, Mr. Bringhurst, but I am asking you how you arrived at the figure of $8.26?

A. That, I don't know. Our accounting department, they would have to answer that. I would have to inquire from them how they got that rate of 38-cents.

456 Q. What is Commission's exhibit 64-A, B, and C, used for?

A. For carload shipments.

Q. Are they ever used on less than carload shipments, the freight rates appearing therein?

A. These are for carloads only.

Q. Now, do you have a list of freight rates, or a printed list of freight rates for less than carload shipments?

A. We do not.
Q. You do not, sir?
A. No, sir.
Q. And that is only on carload shipments, that freight list?
A. Yes, sir.
Q. Would it be a great deal of difficulty to find out for us how you arrived at your freight prices on less than carload shipments?
A. We would have to get the destinations and call the railroad, we have no way of knowing it.
Q. Is that the general procedure?
A. Oh, yes, we so seldom have stuff moved LCL that we have to find out the rate; we have to call the carriers and get the rate. We have no rate list at the origin.
Q. The rate of freight would have nothing to do with the resale price?
A. Oh, no, no, our price is $1.60 or $1.50, as I explained in my previous testimony.
457 Q. Mr. Bringhurst, I asked you on direct examination yesterday whether or not you could determine from your books and records the approximate time that C. D. Kenny's branch at New Orleans discontinued operations. Have you had an opportunity to do that?
A. Yes, sir.
Q. And are you now in a position to testify as to the approximate time C. D. Kenny discontinued operations in the New Orleans territory?
A. Yes, sir.
Q. And will you so testify, sir?
A. Yes, sir.
Q. What is that date, sir?
A. Approximately January, 1941.
Q. And since January, then, 1941, C. D. Kenny Company have not been operating in the New Orleans territory, is that correct?
A. No, sir.
Q. But up to and prior to January, 1941, C. D. Kenny did have a branch here in the New Orleans territory?
A. Yes.
Mr. McBride: May we go off the record just a minute?
Trial Examiner Purcell: Off the record.
(A discussion was had off the record.)
458 Trial Examiner Purcell: Back on the record.

By Mr. Haslett:

Q. And what you have just testified to as the date of the discontinuance of the branch of C. D. Kenny in the New Orleans territory was a discontinuance of salt purchases from your New Orleans office, is that correct, sir?

A. That is correct.

Q. And you did not mean by that testimony that C. D. Kenny Company discontinued operations in the New Orleans territory in January of 1941?

A. No, sir.

Q. They might have fluctuated one month prior to January, of 1941, you don't know, sir?

A. I don't know.

Q. Do your records show that C. D. Kenny made purchases from the Morton Salt Company during the month of January, 1941?

A. Yes, sir.

Q. And there are no purchases shown on the records of the Morton Salt Company subesquent to January of 1941?

A. No, sir.

Q. Now, on yesterday, Mr. Bringhurst, I asked you whether or not you could obtain for us the dollar volume of business done by the Morton Salt Company through its branch office in the New Orleans territory. Have you been able to ascertain that information for us?

459 A. On our billings, yes.

Q. And are you now ready to testify as to the dollar volume of billings out of the New Orleans office?

A. Yes.

Q. What is that figure, sir?

A. The New Orleans office, according to our records, billed in the year 1940, $41,464.38.

Q. And that represented the billings of all types of salt, is that correct, sir?

A. That is correct.

Q. And it also represents the billings of all types of salt, to all classes of customers?

A. That is correct.

Mr. Haslett: I have no further questions to ask the witness at this time, Mr. Examiner, and I now place him in the hands of his capable counsel for cross-examination.

460 Mr. Haslett: I believe, Mr. Examiner, Mr. Bringhurst was on the stand and I had just relinquished him to counsel for the respondent for cross-examination.

Mr. McBride: I would like to have Mr. Bringhurst recalled to the stand for cross-examination.

ROBERT GEORGE BRINGHURST, the witness on the stand at the time of the recess, resumed the stand, and testified further as follows:

Cross-Examination by Mr. McBride.

Q. Mr. Bringhurst, I believe you testified in your direct examination that you carried in your warehouse here at New Orleans all types of salt that you need to serve the trade in the city of New Orleans and its environs, is that correct?

A. Yes.

Q. Will you describe briefly, Mr. Bringhurst, how that salt of all the various items is moved into your warehouse? Does it come direct from a mine or plant of the Morton Salt Company to the warehouse?

A. Yes, sir, orders are placed for whatever needs
461 we require in carload lots, and are shipped by rail from our own plant to our warehouse.

Q. So that all movement of salt of all kinds that you carry in your warehouse from the mine or the plant of the Morton Salt Company to the warehouse are by carload shipments, is that correct?

A. That is correct.

Q. And then, Mr. Bringhurst, when you sell salt in the city of New Orleans with the orders to be filled out of the New Orleans warehouse, you quote in all cases, do you not, the carload prices, being the plant price plus the freight rate from the Morton mine to New Orleans, is that correct?

A. Yes, sir.

Q. So that in effect your sales to the city of New Orleans and its environs are prices f. o. b. the warehouse in New Orleans?

A. That is correct.

Q. Regardless of whether your sales are for one carton, for example, of Morton's blue package, or 100 cartons?

A. That is correct.

Q. And regardless of whether or not any other items other than blue package is for a small quantity or a large quantity?

A. Whatever grades we carry, we sell at the warehouse for delivery f. o. b. the warehouse.

Q. And as to the blue package, your f. o. b. ware-
462 house price is $1.50 per case?

A. That is correct.

Q. You were also asked on direct examination yesterday whether or not Morton Salt Company was the agent for any other salt company in the sale of salt in the New Orleans territory. Do you recall being asked that question?

A. I recall that question.

Q. Do you recall having answered that they were not the agent of any other company?

A. I believe I made that statement.

Q. Is it true, Mr. Bringhurst, that if a customer requests you to sell that customer salt of the Avery Salt Company, that you would take that order and forward it to Chicago for acceptance?

A. Yes, we would have no authority to accept that order. If a customer specified that he desired Avery salt, I would have no authority to accept it without submitting it to Chicago for their decision.

Q. And Chicago decides whether or not the order will be accepted?

A. That is correct.

Q. Do you recall whether or not, Mr. Bringhurst, Chicago has accepted within the past five or six years, any orders for Avery Salt which you have forwarded to Chicago?

A. Yes, there have been some cases.

463 Q. And the Avery salt was delivered pursuant to that acceptance?

A. That is correct.

Q. You don't know of your own knowledge, do you, Mr. Bringhurst, the circumstances under which Avery salt is offered or shipped by the Morton Salt Company?

A. I do not.

Q. I believe you also testified yesterday, Mr. Bringhurst, that you paid a brokerage in some instances of 25-cents where brokerage is paid, and in other instances 30-cents where brokerage is paid, distinguishing between those

two brokerage prices on the grounds that if the shipments are prepaid as to freight, the brokerage would be 25-cents, and that if the shipments were freight collect, the brokerage would be 30-cents. Do you recall testifying to that effect?

A. I recall that, and I would like to withdraw that. I was not entirely clear on that brokerage we allow to brokers. It is 25-cents a ton, and I reviewed my files, and it is 25-cents a ton and not 30-cents. There is no distinction, it is 25-cents a ton.

Q. So that since you gave that testimony yesterday, you have had specific reference to your files in order to refresh your memory with respect to brokerage, is that correct?

A. That is correct.

Q. And in refreshing your recollection after check- 464 ing your files, did you not find that the brokerage on certain items might be 25-cents a ton, but that it might also be a different amount, depending upon the items involved?

A. That is correct.

Q. And you now wish to correct your original statement with respect to the 25-cents and 30-cents?

A. I should like to correct my testimony on that.

Q. You find nothing in your files that would indicate that whether or not the freight was prepaid or freight was collected, would have any bearing on the brokerage?

A. No, sir.

Q. Mr. Bringhurst, I show you Commission's exhibit No. 57, and call your attention to that exhibit, the figures which purport to show the sale of 200 cases of Kleer salt to the Great Atlantic & Pacific Tea Company on April 6, 1939, and the notation thereon of the sale of 200 cases of Kleer salt to the Great Atlantic & Pacific Tea Company on July 7, 1939. Do you find that notation on that exhibit?

A. I see that on this exhibit, yes.

Q. You will observe that it shows with respect to those two sales, 75-cents a case less 5-cents, as to the April 6th sale, and 70-cents a case less 5-cents as to the July 7th sale, is that correct?

A. That is correct.

Q. Can you state, Mr. Bringhurst, whether or not 465 the price scale of Morton Salt Company with respect to cases of 36 one and one-half pound Kleer packages

was supplemented between the dates of April 6, 1939, and July 7, 1939?

A. Yes, there was a supplement issue rducing the price 5-cents, or to 70-cents, as near as I can recall, in the month of May, in the latter part of May, 1939, or between the period of April 6th and July 7th.

Q. So that the difference between 75-cents and 70-cents with respect to the April 6th and the July 7, 1939, sales, does not represent a discount, but rather a supplemental price with a differential of one nickel?

A. That is right, the supplemental price scale was supplemented with the supplement appearing in the scale reduced in price to 70-cents.

Q. And as of July 7, 1939, your price to the trade in New Orleans on the Kleer salt just described, was 70-cents?

A. To all buyers, that is correct.

Q. And that was not a special price to the Atlantic & Pacific Tea Company?

A. No special price to anyone, that was the price covered by the supplement.

Q. One thing further on that same question, Mr. Bringhurst. The list price as supplemented from time to time, having particular reference to the 75-cent price and the 70-cent price on the dates just referred to, has nothing
466 to do with the amount of discount allowed to the Great Atlantic & Pacific Tea Company as a quantity buyer, is that correct?

A. No, sir, the 70-cent price is the price we quote everybody.

Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: Just a few questions, Mr. Examiner.

Redirect Examination.

By Mr. Haslett:

Q. You testified on your cross examination that you had on occasions taken orders for salt and transmitted such orders to the Morton Salt Company in Chicago, for sales made on Avery's salt. That salt is processed by the Avery Salt Company, is that correct?

A. We haven't accepted it, we have transmitted the order to Chicago, yes.

Q. And is that Avery Company, is that a subsidiary of the International Salt Company?

A. That, I do not know.

Q. You also testified as to the scale of brokerage granted to the various brokers of the Morton Salt Company upon commodities sold to customers in various territories. Is there a different scale paid to the broker on each particular item of salt, type of salt?

A. We have a schedule of brokerage we allow to our broker. Now, 25-cents a ton applies to bulk salt in 467 sacks, and so forth, and then there are other rates for other grades.

Q. What would be the brokerage on Morton's free running salt?

A. Well, I don't want to go on the record as being positive, but—

Q. Well, now, if you are not sure about it, I would rather you would refer to your records and testify at a later date of the exact amount.

A. I would be glad to furnish you that.

Q. Would it be possible to obtain the schedule of brokerage paid on various types of salt, is that printed?

A. I have a schedule bulletin on it, a record on it. I don't think I have a regular prepared schedule.

Q. Would it be possible for you to refer to your records and state the amount of brokerage paid on Morton's free running salt?

A. Yes.

Q. Now, you referred to Commission's exhibit 57, and stated that the scale of salt in effect at the time that the Great Atlantic & Pacific Tea Company was sold 200 cases of Kleer salt, that is, on April 6, 1939, and on July 7, 1939, that a supplement was issued thereto which changed the sale price of the salt to the user or the consumer?

A. Not to a consumer.

Q. Well, to a retailer?

A. To our buyers.

468 Q. Your customers?

A. That is right.

Q. Have you a copy of that supplement in your files?

A. I think I can get you a copy.

Q. I would appreciate that, sir. No matter what the scale price would be on Kleer salt, it would in nowise affect the quantity discount granted to the A&P Tea Company?

A. We quote them the scale price. That has no bearing on the quantity discount.

Mr. Haslett: I think that is all.
Trial Examiner Purcell: Any further recross?
Mr. McBride: No.
(Witness excused.)
Mr. Haslett: Mr Mount.

WALTER MOUNT was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your name for the record, Mr. Mount?
A. Walter Mount.
Q. And where do you reside, sir?
A. 1128 St. Andrew.
Q. Is that in New Orleans?
469 A. In New Orleans.
Q. In what business are you engaged?
A. Wholesale grocery and produce.
Q. With what company are you connected?
A. Kohlmann Brothers & Sugarman.
Q. And what position do you hold with that company?
A. Assistant to Mr. Sirera, who is vice-president and general sales manager.
Q. What is the business of Kohlmann Brothers & Sugarman?
A. Wholesale groceries and produce.
Q. They sell groceries and allied products to the retailer customers?
A. Yes, sir.
Q. In the New Orleans territory?
A. Yes, sir.
Q. How long have you been in the grocery business?
A. Thirteen years.
Q. And how long have you been connected with Kohlmann Brothers & Sugarman?
A. Thirteen years.
Q. And will you describe in some detail your duties in connection with your position with that company, sir?
A. Oh, buying of merchandise, the passing of invoices where merchandise has been purchased, and in charge of the salesmen.

Q. And among your duties is the purchase of salt?
470 A. Yes.
Q. Does your company purchase salt from the Morton Salt Company?
A. Yes, sir.
Q. And how long has that been going on, sir?
A. Well, as long as I have been there, thirteen years.
Q. What type of salt is purchased from the Morton Salt Company?
A. We buy this Kleer salt, which is a flat package, 36 one and one-halves, and then the round blue package.
Q. Free running salt?
A. Free running salt.
Q. And also Morton's blue package iodized salt?
A. Yes, sir.
Q. And will you state in detail the method and manner in which you place orders with the Morton Salt Company on the products that you buy from them, sir?
A. We just draw our orders on their warehouse, 25 or more cases of salt.
Q. And do your trucks call at the warehouse for the products?
A. Yes.
Q. Do they get their supply and bring it back to your place of business?
A. Yes, sir.
Q. Approximately how many cases of Morton's
471 free running salt do you purchase a year?
A. I would say on an average of 100 cases a month.
Q. That would be about 1200 cases a year?
A. About 1200 cases a year.
Q. Does your company receive any discounts or allowances of any sort from the Morton Salt Company?
A. No, sir.
Q. Does it purchase in carload lots?
A. No, we never purchase in carload lots.
Q. What is the price your company pays for the round package free running salt?
A. $1.50 per case.
Q. Is that the same price you pay for the iodized salt, also, sir?
A. The same price.
Q. What is the resale price on that, the list price?
A. $1.70 a case.

Q. How many salesmen are employed by your company?

A. We have 17 salesmen.

Q. Seventeen, and they solicit orders for salt and other products from the retail grocerymen?

A. Yes, sir.

Q. Does your company receive any allowance in the form of check or in the form of credit memos from the Morton Salt Company on its purchases of Morton's free running salt?

472 A. No, sir.

Q. It pays the regular price of $1.50 per case?

A. $1.50 per case.

Q. I presume you have competitors in your business?

A. Yes, we do.

Q. Would you name some of your competitors?

A. Well, Goodman-Beer, Albert Mackie, Gerde, Newman, Jackson Wholesale, Spot Cash Wholesale, Witherspoon Brothers; I could name a few more if you like.

Q. Up to a short time ago was the C. D. Kenny Company a competitor of your company?

A. They were.

Q. And they sold salt and groceries and allied products to the retailers in competition with you?

A. Yes, they did.

Q. Do you know whether or not your company has ever lost any customers on salt to the C. D. Kenny Company?

A. I couldn't positively say whether we lost it to that account or not.

Q. Does your company receive any discount from the Morton Salt Company if it pays its bills within a specified time?

A. No, sir.

Q. No cash discount at all?

A. No, no cash discount.

Q. Mr. Mount, if a competitor of your company 473 was selling Morton salt at a price which was one cent less than the price which you were asking for the commodity of the same size, same grade and quality, would that in any way affect your business?

A. In some instances, it would.

Q. Will you name the instances when it wouldn't, sir?

A. On a bid proposition.

Q. Well, your retailers don't bid for salt, do they?

A. Oh, no, if you are speaking of retailers.
Q. Let's confine the question to retailers.
A. I don't think it would make any difference in the retailers.
Q. You don't think so?
A. No, sir.
Q. If a competitor was offering Morton's salt at $1.60 a case, and you were selling it at $1.61 a case, you don't think that would in any way affect your business, sir?
A. Not in the ordinary run of retail grocers.
Q. What differential in price would affect your business?
A. I would say 5 to 10-cents a case.
Q. If he were selling it at $1.60 a case and you were selling it at $1.65, that would affect your business?
A. It would, yes.
Q. And you don't think any amount in between the 5-cent margin would affect your business at all?
474 A. Not in the ordinary run of retail grocery business, I don't think so.
Q. Have you in your experience as an employee of Kohlmann Brothers & Sugarman ever occasioned the loss of customers to competitors on salt?
A. Well, yes, we have lost customers on salt.
Q. On salt?
A. Yes.
Q. And do you know what competitor you lost such customers to, sir?
A. No, I wouldn't be able to say what competitors I lost the business to.
Q. But you have lost salt business?
A. I have, yes.
Q. Have your purchases of salt from the Morton Salt Company increased during the past five years?
A. They have increased, yes.
Q. To any great extent?
A. Well, may I elaborate on that answer?
Q. Yes, if you wish.
A. The firm of Kohlmann & Sugarman Company from October, 1940, we only had five salesmen. In October, 1940, H. T. Cotham Company and Kohlmann Brothers consolidated. Of course, that would account for an increase in business for Kohlmann Brothers and Sugarman, since that period from October 1st.

475 Q. Due to the fact they have had more salesmen?
A. More salesmen, yes.
Q. And they had the combined business of both companies' customers?
A. Yes.
Q. Now, what firm were you with prior to 1940 when the merger took place?
A. I was with Kohlmann Brothers & Sugarman.
Q. Now, when you were with Kohlman Brothers & Sugarman, prior to the merger, was the purchase of salt from the Morton Salt Company the same, year in and year out, practically the same, sir?
A. Practically the same, yes.
Q. You are now paying $1.50 a case for Morton's free running salt?
A. Correct.
Q. And you have been paying that same price for the past several years?
A. Correct.
Q. And you have never received any discount allowance of any sort from Morton Salt Company on your purchases of salt?
A. On the round package, we have never received any.
Q. You have never received it on the round package?
A. No, sir.
Q. Have you received it on any other type of salt?
476 A. Well, it wouldn't be called a discount, it was shown on the face of the invoice, they bill you so much per case less so many units, and they consider a unit 5-cents.
Q. And you are sure you are talking about Morton's salt?
A. No, I am talking about Kleer salt.
Q. You say, it would be a unit discount on Kleer salt, and it would appear on the invoice?
A. On the Kleer salt, the flat package.
Q. And it would be 5-cents discount per case?
A. I think they figure it in units of 5-cents, yes.
Q. Would it be a multiple of units?
A. No.
Q. Just one unit of 5-cents per case?
A. Yes, they would quote a list price less one unit.
Q. Would that be on purchases from the warehouse of Morton Salt Company?

A. On the Kleer brand only, the flat package.
Q. I see, on the Kleer brand only?
A. Yes, sir.
Q. But it would be on the purchases of Kleer brand from the warehouse of the Morton Salt Company in New Orleans?
A. Yes.
Q. Do you think it would be possible for you to obtain some of those invoices for us?
A. I think I could get some of those.
477 Mr. Haslett: Let us get off the record a minute.
Trial Examiner Purcell: Off the record.
(A discussion was had off the record.)
Trial Examiner Purcell: On the record.
Mr. Haslett: Mr. Examiner, at this time I want to excuse this witness temporarily to allow him to go to his place of business and obtain for the Commission a representative number of invoices showing the unit discount of which he has just been testifying, and he will appear in the morning at 10 o'clock, and at which time I can put him on the stand and clear it up in a very short time, with the understanding, of course, that he is held under the subpoena.
Trial Examiner Purcell: Very well, sir.
(Witness temporarily excused.)
Mr. Haslett: Mr. Stratford.

HERBERT RIDLEY STRATFORD was thereupon called as a witness for the Commission having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record?
A. Herbert Ridley Stratford.
Q. Where do you reside, Mr. Stratford?
A. Chicago, Illinois.
478 Q. And in what business are you engaged?
A. The salt business.
Q. And with what company are you connected?
A. With the Morton Salt Company.
Q. And what position do you hold with that company?
A. I act in the capacity of general sales manager.

Q. And your main office is in Chicago?

A. Yes.

Q. At the principal office and place of business of the respondent, Morton Salt Company?

A. Yes, sir.

Q. Located at 310 South Michigan Avenue?

A. Yes, sir.

Q. How long have you been connected with the Morton Salt Company?

A. Approximately ten years.

Q. And how long have you been in the salt business?

A. The same time.

Q. Then, your experience in the salt business has been confined entirely to the Morton Salt Company's activities?

A. Yes.

Q. Will you state in some detail your duties as general sales manager of the Morton Salt Company?

A. My duties as sales manager of the Morton Salt Company is entirely supervision of our field sales
479 force in so far as their selling activities are concerned, and sales promotional activities.

Q. And you have under your supervision, then, the salesmen, the sales managers, in the various branch offices of the Morton Salt Company?

A. Yes, sir.

Q. And the gentleman who has been testifying here for the past two days, Mr. Bringhurst, is under your general supervision?

A. Yes, sir.

Q. Is it your duty to approve all types of advertising used in connection with the sales of Morton salt?

A. I participate in that approval.

Q. Is it subject to a conference of the officers of the Morton Salt Company?

A. Yes, sir.

Q. Whenever you want to initiate some promotional scheme or practice, and when I use the word "scheme" I have no ulterior motive at all, when you want to initiate some practice, it is subject to the discussion of the staff of officers of the Morton Salt Company before it is effectuated, is that right, sir?

A. It would depend upon its importance.

Q. Matters of minor importance are left entirely up to your discretion?

480 A. Yes, sir.

Q. Mr. Peterkin in Chicago testified that Morton Salt Company employed brokers to represent them in various territories in the sale of their products to retailers and large users. Are those brokers under your supervision, also?

A. Yes, sir.

Mr. McBride: Mr. Examiner, may I ask Mr. Haslett to correct his question to the extent that Mr. Peterkin testified that they on occasions employed brokers? I am afraid the inference of the question is that we always do in all territories.

Trial Examiner Purcell: I remember Mr. Peterkin's testimony in that regard very clearly, and he did say on occasions.

Mr. Haslett: Well, Mr. Examiner, since both counsel for the respondent and the Examiner remember that so clearly, I will accept the amendment to my question.

By Mr. Haslett:

Q. Mr. Peterkin testified that occasionally they employed brokers. Are those brokers under your general supervision, sir?

A. They are, as a broker can be under one's supervision.

Q. You have contact with these brokers?

A. Yes, sir.

Q. And the amount of brokerage paid to each
481 broker would not be uniform, is that correct, sir?

A. It would depend upon the items that were sold.

Q. Is there a uniform scale of brokerage paid by the Morton Salt Company to its various brokers upon the sale of salt through such brokers to customers of the Morton Salt Company?

A. There is such a scale of brokerage to the brokers that represent us in the field.

Q. And is that a printed scale?

A. No, sir.

Q. Is that in the files of the Morton Salt Company in Chicago?

A. I believe so.

Q. Mr. Bringhurst testified on his direct examination this morning that on the sales of salt to the C. D. Kenny Company branch here in New Orleans, when it was op-

erating, that no discount whatsoever was allowed C. D. Kenny on the purchases of Morton's free running or Morton's iodized blue package salt. Was that strictly in accordance with the facts?

A. It was, so far as he was concerned.

Q. But is that in accordance with the facts which really exist as to the relationship between the Morton Salt Company and the C. D. Kenny Company?

A. No, sir.

Q. Am I correct when I state, then, that upon the sales of Morton's free running package salt and Morton's
482 iodized round package salt to the C. D. Kenny Company's branch in New Orleans, that an allowance of 10-cents a case has been paid and was paid by the Morton Salt Company up to the time that the C. D. Kenny Company's plant in New Orleans ceased to operate?

A. A quantity discount of 10-cents per case was paid them on qualified 5,000 cases of free running and iodized salt.

Q. And you have particular reference to the branch of C. D. Kenny Company in New Orleans?

A. Not that branch itself purchased 5,000, but that C. D. Kenny Company purchased 5,000 cases.

Q. But on the purchases of the branch in New Orleans, such discount was allowed?

A. Yes.

Q. Now, Mr. Bringhurst also testified yesterday as to customers who purchased in less than carload lots of Morton's free running and Morton's iodized salt from the New Orleans warehouse, that all customers were charged $1.60 per case for such salt, is that correct, sir?

A. Yes, sir.

Q. Now, on sales of the salt from the same warehouse to customers who are located within the city limits of New Orleans and who would call at the warehouse for Morton's free running and Morton's iodized salt, such salt was
483 sold at $1.50 per case, is that correct?

A. F. O. B. the warehouse, yes.

Q. That is right. Now, the only time, then, that the salt is sold for $1.60 a case is where it is shipped to some destination beyond the limits of New Orleans, is that correct, sir?

A. Not strictly, sir. The $1.60 price applies when shipment is made from our warehouse to some outside point.

Q. And would the freight be paid on that shipment by the Morton Salt Company?

A. Yes, sir.

Q. Now, the difference between the $1.50 price and the $1.60 price is a 10-cent differential. Could you state how that 10-cent differential was arrived at, sir?

A. The 10-cent differential is an arbitrary figure, obviously to approximate the extra cost of handling on our part when shipped from a destination point of our car to some outside point, entailing double handling.

Q. Then, in some instances the freight would be more than the 10-cents allowance, and in other cases it would be less than 10-cents allowance, is that correct, sir?

A. It may be one or the other.

Q. But it depends entirely upon what the destination is?

A. Yes, sir. I might add that those cases are so infrequent that it is hard to make any definite state-
484 ment on what the actual freight cost might be.

Q. Would the same policy be in effect in regard to the differential in price of 10-cents from $1.50 to $1.60 a case for Morton's free running and Morton's iodized salt in all sales offices and warehouses of Morton Salt Company located throughout the country? Do you understand that question?

A. I don't believe I do.

Mr. Haslett: Read the last question, Mr. Reporter, please.

(The question referred to was read by the reporter.)

The Witness: A drop shipment or LCL price would apply wherever it is reshipped from a destination point such as a warehouse, throughout the territory we operate.

By Mr. Haslett:

Q. In order that I may clear that up just a bit more for the record, you have a branch warehouse in Washington, D. C.?

A. We have a space in a public warehouse.

Q. And would the $1.60 price for less than carload shipments of salt be effectuated from the warehouse in Washington, D. C., to customers located in Virginia?

A. If we made a drop shipment from Washington, LCL, to a point in Virginia, our price would be $1.60 f. o. b. that Virginia point.

Trial Examiner Purcell: What do you mean by a
485 "drop shipment"?

The Witness: An LCL shipment.

Trial Examiner Purcell: Are the two terms synonymous?

The Witness: Yes, sir.

By Mr. Haslett:

Q. When you say a drop shipment, you mean that is a less than carload shipment?

A. Yes.

Q. Then, am I correct when I state that the same policy that is in effect in the New Orleans office in regard to less than carload shipments and the carload shipments are in effect in all other areas where Morton Salt sells its products?

A. Yes.

Q. And they only have two prices there for the Morton's free running salt, two general prices for the Morton free running and the Morton's iodized salt, and that is $1.50 and $1.60 a case, except in those instances where they grant discounts on a quantity basis?

A. Yes.

Q. Will you state, please, for the record, how the requirements are supplied to the branch warehouse in the New Orleans territory by the Morton Salt Company?

What method and procedure is followed by the Mor-
486 ton Salt Company in the placing of orders for requirements from the branch office to the main office and then to the processing plant?

A. It is my belief that the New Orleans office determines when they should refill their needs at the New Orleans warehouse, and at such time will make up a carload order and submit it to the Chicago office, who in turn, passes that carload order on to our Grand Saline plant for shipment to New Orleans.

Q. And then the commodities are then shipped to New Orleans from Grand Saline, Texas?

A. Yes, sir.

Mr. Haslett: May we go off the record just a moment?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Proceed, gentlemen.

By Mr. Haslett:

Q. Among your duties as the general sales manager of the Morton Salt Company, do you call upon any customers of the Morton Salt Company in order to solicit business?

A. Well, not actually to solicit orders.

Q. What is it, more of a good will call?

A. Yes, sir.

Q. No missionary work, do you do any missionary work at all, what we have been referring to here as missionary work?

A. You might term a good will call as such.

487 Q. Would you clarify that phrase for us, so that the record may be clear on it, just what you mean, or what I mean, or what we both mean, when we say "missionary work"?

A. Missionary work is a term given for the work which our retail salesmen do in contacting retail stores, and involves the duties of promoting sales of Morton products through those stores.

Q. Does Morton Salt Company employ an advertising agency to handle the advertising for the promotion and sale of Morton salt?

A. They employ an advertising agency to aid us in our advertising program.

Q. Is it the policy of the Morton Salt Company to grant its carload discount to a group of purchasers that combine their purchases and purchase on a carload basis?

A. For all of those who participate in a pool car, such carload discount is granted.

Q. And that discount, then, would be applied on the proportion of the commodities purchased?

A. It would apply to the items purchased by each participant of the car.

Q. Just one more question, Mr. Witness. Is the Morton Salt Company the only processor of salt that now have in effect a quantity discount basis, based upon the purchase of 5,000 cases of free running salt per year, and 50,000
488 cases of free running salt per year, where a discount is allowed of 10-cents and 15-cents, respectively?

A. I do not know.

Q. When I asked my last question, Mr. Witness, I was referring to free running and Morton's iodized salt?

A. That would be impossible.

Q. You mean, no one else manufactures or processes free running iodized salt except Morton's Salt Company?

A. No one processes Morton's free running and iodized salt but the Morton Salt Company.

Q. So, then, I am correct when I state that Morton Salt Company is the only salt company that grants and allows a discount of 10-cents per case on 5,000 cases of Morton's free running salt, and 15-cents a case on 50,000 cases of Morton's free running salt purchased during a 12 consecutive month's period?

A. That would be the only one.

Mr. Haslett: I think that is all, Mr. Examiner, that I have at this time of this witness, and I will turn him over for cross examination.

Cross Examination by Mr. McBride.

Q. Mr. Stratford, I have only one question by way of clarifying the record. You stated, I believe, on direct examination that a quantity discount of 10-cents was
489 paid to the C. D. Kenny Company with respect to purchases by the C. D. Kenny Company branch in New Orleans of Morton's free running and Morton's iodized up until the time that branch was closed in New Orleans, is that correct?

A. No, sir.

Q. No such discount would have been paid on purchases by the New Orleans branch except during the period that C. D. Kenny Company's aggregate purchases equalled or exceeded 5,000 cases of the blue package salt, or in a 12 consecutive months' period, is that correct?

A. Yes, I think the record shows that.

Q. So that until such time as C. D. Kenny Company's purchases in the aggregate came within the qualifications requirement, no such 10-cent discount was paid on the purchases by the branch here in New Orleans?

A. No, sir.

Mr. McBride: I believe that is all, sir.

Trial Examiner Purcell: Any redirect?

Mr. Haslett: No redirect, Mr. Examiner, and I will excuse the witness.

Trial Examiner Purcell: Thank you very much, Mr. Stratford.

(Witness excused.)

Mr. Haslett: Mr. Examiner, I want the record to show that the president of the W. H. Hartson Grocery Com-
490 pany, 1202 Soniat Street, New Orleans, Louisiana, was subpoenaed as a witness for the Commission, and has been excused.

The same is also true as to Mr. I. M. Elizey, of 2050 Magazine Street, New Orleans, Louisiana. He also was subpoenaed as a witness for the Commission, and I would like for the record to show that I excused both of these gentlemen in a conversation over the telephone, and they did not appear in response to the subpoena due to my excusing them from appearing as witnesses.

Trial Examiner Purcell: Let the record so show.

491 Room 1107,
Pere Marquette Building,
New Orleans, Louisiana,
Friday, April 24, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

M. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

492 Mr. Haslett: Mr. Examiner, at this time, I want to recall to the stand Mr. Mount, of the Kohlmann Brothers & Sugarman, Inc., of this city.

Trial Examiner Purcell: Let the record show that Mr. Walter Mount has heretofore been sworn.

WALTER MOUNT, was thereupon recalled as a witness for the Commission, having been previously sworn, and testified further as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Mount, during the course of the proceedings on yesterday, you testified that the Morton Salt Company had granted a unit discount on Kleer salt, which discount
493 was shown on the invoice passing between the Morton Salt Company and the Kohlmann Brothers & Sugarman Company. I asked you at that time if you would go back to your office and obtain for us some representative group of invoices showing such unit discount. Have you had an opportunity since yesterday to examine the files and records of the Kohlmann Brothers & Sugarman Company?

A. I have, yes.

Q. And have you been able to find any such invoices, sir?

A. No, sir.

Q. So you were mistaken yesterday?

A. I was mistaken, yes.

Q. And you were mistaken when you made the statement that the unit discount of 5-cents is shown on the invoice on Kleer brand salt of the Morton Salt Company?

A. Yes, I was mistaken.

Q. And you now want to correct your testimony?

A. Yes.

Mr. Haslett: Mr. Reporter, I hand you herewith a document and asked that it be marked for identification as Commission's exhibit No. 65.

(The document referred to was marked "Commission's Exhibit 65" for identification.)

By Mr. Haslett:

Q. Mr. Mount, I hand you a document that has been
494 marked for identification as Commission's exhibit No. 65, and ask you to state what it is, if you know, sir?

A. It is an invoice for 50 cartons; 24 one pound and ten ounces Morton's free running salt at $1,50 per case, total $75.

Q. And under what date is it?

A. July 3, 1939.

Q. And has it an invoice number?

A. Invoice No. 9890.

Q. And was the commodity as represented on Commission's Exhibit No. 65 for identification, sold by the Morton Salt Company to Kohlmann Brothers & Sugarman, Inc.?

A. Yes, it was.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's exhibit No. 65.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 65" was received in evidence.)

By Mr. Haslett:

Q. Now, Mr. Mount, I again hand you Commission's exhibit No. 65, and ask you to state whether or not that invoice is representative of the invoices passed between Morton Salt Company's office at New Orleans, Louisiana, and the Kohlmann Brothers & Sugarman Company at New Orleans, Louisiana, for Morton's free running salt?

A. It is.

Q. And was the commodity as shown on Commission's exhibit No. 65 obtained by Kohlmann Brothers & Sugarman from the warehouse of the Morton Salt Company, with Kohlmann Brothers & Sugarman's own equipment?

A. It was, sir.

Q. I mean, trucking equipment.

A. Trucking equipment, yes.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 66.

(The document referred to was marked "Commission's Exhibit 66" for identification.)

By Mr. Haslett:

Q. Mr. Mount, I hand you a document which has been marked for identification as Commission's exhibit No. 66, and ask you to describe it, please, sir?

A. It is an invoice from the Morton Salt Company, No. 3083, dated September 14, 1940, for 60 cases of 24 one pound and ten ounce Morton's free running salt, $1.50 a case, $90, and 40 cases of 24 one pound and ten ounce Morton's iodized salt, $1.50 a case, total $60; total invoice $150.

496 Q. Was it sold to Kohlmann Brothers & Sugarman, Inc.?

A. It was sold to Kohlmann Brothers & Sugarman, Inc.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked Commission's exhibit No. 66, and will be so marked by the reporter.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 66" was received in evidence.)

By Mr. Haslett:

Q. Now, Mr. Mount, is Commission's exhibit No. 66 representative of the invoices passed between the Morton Salt Company and your company?

A. It is, sir.

Q. For Morton's free running and Morton's iodized salt?

A. It is.

Q. And such commodities are picked up at the warehouse of the Morton Salt Company by your own equipment?

A. By our own trucking equipment, yes.

Mr. McBride: Mr. Examiner, may I request that I be permitted to withdraw Commission's exhibit numbers 65 and 66 for the purpose of making photostats, thereafter to return the originals for the record?

497 Trial Examiner Purcell: Granted.

By Mr. Haslett:

Q. Mr. Mount, on yesterday I asked you whether or not your business or the business of the company with which you are associated would be affected if a competitor of yours offered to sell salt to one of your customers at a cent less than the price which you were charging for that particular commodity to that customer. Will you state whether or not, Mr. Mount, your business would be in any way affected if one of your competitors offered to sell and did sell salt at a cent less than the price that you were offering that commodity to a particular customer?

Mr. McBride: If the Examiner please, I object to that question. It has already been asked and answered on previous testimony this witness.

Trial Examiner Purcell: Sustain the objection.

By Mr. Haslett:

Q. What would be the effect on your business, Mr. Mount, if a competitor of Kohlmann Brothers & Sugarman offered to sell to one of your customers Morton's free running salt at $1.50 per case?

A. I wouldn't be able to sell that customer at that price, I would lose the business.

Q. You would lose the business?

A. Yes, sir.

498 Q. That is the price you pay for it, sir?

A. Correct.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: Any cross-examination?

Mr. McBride: Yes, if you please, Mr. Examiner.

Cross-Examination by Mr. McBride.

Q. Mr. Mount, if an organization engaged in the wholesale grocery business such as the company with which you are associated, was to employ, shall we say, ten salesmen and subsequently increased its staff of salesmen within the same territory to twenty salesmen, the chances are there would be an appreciable increase in the business of that wholesale company, would there not?

A. There would be, yes.

Q. The increase in the staff of salesmen would permit a more thorough and intense coverage of the territory, isn't that correct?

A. Yes, sir.

Q. And the volume of your sales in so far as the products handled by that house is concerned, would increase as a result of the extra sales coverage?

A. It would, sir.

Q. I think you testified yesterday, Mr. Mount, that your company, Kohlmann Brothers & Sugarman, absorbed

499 or merged with another house in New Orleans sometime in 1940?

A. That is correct, sir.

Q. What was the name of that other house?

A. H. T. Cotham & Company.

Q. And about what time in 1940 did that merger take place?

A. October 1, 1940.

Q. 1940?

A. Yes.

Q. Can you state approximately, Mr. Mount, whether or not the monthly purchases of the merged company of Morton's free running and Morton's iodized salt were the same or approximately the same from month to month after October, 1940, to date?

A. No, there was a slight increase.

Q. A slight increase?

A. Yes, sir.

Q. And that slight increase was attributable to the combined effort of the merged houses, as nearly as you can tell?

A. Yes, sir.

Q. And represented, did it not, the proportionate increase in your general sales of all types of groceries handled by the merged houses?

A. I don't quite get that question, sir.

Q. Let me clarify it.

A. All right.

500 Q. From October, 1940, on, after the merger took place, is it not true, Mr. Mount, that the sales or the gross volume of all of the grocery products handled by the merged houses, increased slightly as a result of the merger, and the increased sales effort of the merged houses?

A. Yes.

Q. And so, as nearly as you can recall, the sale of Morton's free running and Morton's iodized salt increased more or less in proportion to the general increase of the merged business, is that correct?

A. Correct, sir.

Q. There was no particular increase, sharp increase, in the sale of Morton's salt as contrasted to any other type of product handled by your house?

A. No.

Q. Do you recall, Mr. Mount, when the New Orleans branch of C. D. Kenny Company was closed?

A. I really don't know the exact date, sir.

Q. Would it be in 1941?

A. I think it was in 1941, sir.

Q. Would it be in the summer or the spring or the late winter of 1941?

A. I think it was in the spring, if I remember correctly.

Q. And I believe you testified that until the New Orleans branch of C. D. Kenny Company closed up, that they

501 were, as you described them, a competitor of yours in the city of New Orleans?

A. They were, yes.

Mr. McBride: I believe that is all, Mr. Examiner.

Trial Examiner Purcell: Any redirect?

Mr. Haslett: No, I don't think so, Mr. Mount. Thank you very much for coming back.

(Witness excused.)

Mr. Haslett: Mr. B. C. Sale.

BENJAMIN CECIL SALE, was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name, please, Mr. Sale?

A. Benjamin Cecil Sale.

Q. And you reside in New Orleans?

A. I do.

Q. What business are you engaged in?

A. The chain grocery.

Q. And with what company are you associated?

A. H. G. Hill Stores, Inc.

Q. And what position do you hold with that company?

A. Buyer.

502 Q. You are the buyer for H. G. Hill Stores?

A. Yes, sir.

Q. Where are the H. G. Hill Stores located, sir?

A. New Orleans, Louisiana, headquarters, 1009 South Broad Street.

Q. And do they have a general office in some other city, sir?

A. No.

Q. Then, the main office of the H. G. Hill Stores is located in New Orleans?

A. Correct.

Q. Now, what is the business of the H. G. Hill Stores?

A. Retail grocery business.

Q. They sell groceries and allied products direct to the consuming public?

A. They do.

Q. And is salt among the commodities sold through the H. G. Hill Stores?

A. It is.

Q. How long have you been associated with the H. G. Hill Stores?

A. Since January 6, 1941.

Q. 1941?

A. Yes.

Q. And prior to that time, were you in the grocery
503 business, sir?

A. I was.

Q. And how long have you been in the grocery business?

A. Approximately 25 years.

Q. And your position now is buyer for the H. G. Hill Stores?

A. The H. G. Hill Stores, Inc.

Q. And do you buy all types of commodities for the H. G. Hill Stores, Inc.?

A. No, I only buy certain particular items. Our buying is broken down into certain classifications, different buyers for meats, for produce, and two buyers for groceries.

Q. And do you buy groceries, sir?

A. I buy certain grocery items.

Q. And is salt among the commodities that you purchase?

A. It is.

Q. And do you purchase from the Morton Salt Company?

A. I do.

Q. What type of salt do you purchase from the Morton Salt Company for the H. G. Hill Stores, Inc.?

A. Morton's plain and iodized.

Q. Is that the round package blue label salt, sir?

A. The 26 ounce package.

Q. What price do you now pay for it, sir?

A. $1.50.

504 Q. Is that $1.50 per case?

A. Per case.

Q. And would it be the same price on free running and iodized salt?

A. It is.

Q. And do you purchase from the branch office of the Morton Salt Company located here in New Orleans?

A. We do.

Q. And do you obtain your supply from the warehouse of the Morton Salt Company here in New Orleans?

A. We do.

Q. Does your company operate trucks?

A. They do.

Q. And do the trucks of the H. G. Hill Stores, Inc., call at the warehouse of Morton Salt Company and obtain their supply from that warehouse?

A. They do, except that if we didn't have one of our trucks available, we would hire an outside drayer.

Q. But on all occasions, either hire the drayer or use one of your own trucks?

A. That is correct.

Q. The Morton Salt Company doesn't send any over to you?

A. They do not.

Q. Does your company get any allowance or discount of any sort from the Morton Salt Company upon pur-
505 chases of round package salt?

A. The allowance that we receive comes through the H. G. Hill Company, of Nashville, Tennessee.

Q. I see, and how much is that, sir?

A. Ten-cents per case.

Q. Ten-cents per case?

A. Yes, sir.

Q. And how is that received by your company, is it in the form of a check?

A. A check from the H. G. Hill Company of Nashville, Tennessee.

Q. And is that received periodically, or in what manner is it received, quarterly, semi-annually, or yearly?

A. I couldn't answer that. I am not familiar with that.

Q. But you do know that you do receive a check from the H. G. Hill Company?

A. I have been told that we do.

Q. Did you obtain that information through the regular course of your business?

A. Only after the subpoena came to appear as a witness in this case. I was not familiar with any case allowance whatsoever until this subpoena was served on our company.

Q. And then you ascertained that you did receive the 10-cents per case allowance?

A. Yes.

506 Q. On Morton's free running salt?

A. Yes.

Q. What is the resale price of Morton's free running salt to the consumers through your stores, sir?

A. Well, in the super store, it is 7-cents, and I am not certain, but I think our retail and our regular stores, it is two for 15-cents.

Q. It is 7-cents in your super stores?

A. Yes, and two for 15 in our regular stores.

Q. And how many super stores does your company operate within the metropolitan area of New Orleans?

A. Five super stores under the name of H. G. Hill Stores, Pelican Super-Markets.

Q. Pelican?

A. Pelican Super Markets.

Q. And how many regular stores are operated by H. G. Hill Company?

A. Approximately 81 regular, outside of the supers.

Q. And that is all in the metropolitan area of New Orleans?

A. That is correct.

Q. Is the stock of the H. G. Hill Stores, Inc., of which you are associated, in any way owned or controlled by the H. G. Hill Company of Nashville, Tennessee?

A. As far as I know, it isn't. I am not familiar with our corporate set-up.

507 Q. Who would be familiar with that, sir?

A. Mr. C. P. Binnings.

Q. He is the treasurer of your company?

A. Yes, sir.

Q. And is he here in New Orleans?

A. Yes.

Q. And it has no legal connection with any other H. G. Hill Stores?

A. I don't know.

Mr. McBride: If the Examiner please, I will object to that. The witness has already testified he didn't know.

Trial Examiner Purcell: He answered he didn't know.

Mr. McBride: I will withdraw the objection.

By Mr. Haslett:

Q. Who, Mr. Sale, in your organization would be in a position to testify as to the relationship between H. G. Hill Stores, Inc., of New Orleans, and H. G. Hill Stores, Inc., of Nashville, Tennessee, together with the relationship pertinent to the Morton Salt Company?

A. I presume that Mr. C. P. Binnings would be, the treasurer of our company.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

508 Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Does your company purchase commodities from the Morton Salt Company on a carload basis?

A. No, we pick it up as we need it.

Q. From the warehouse of the Morton Salt Company?

A. That is correct.

Q. Does your company purchase any other type of salt, other than the free running round package blue label salt?

A. Not from Morton Salt Company.

Q. That is the only type you purchase from the Morton Salt Company?

A. That is.

Q. During the year 1941, did your company, the H. G. Hill Stores, Inc., of New Orleans, Louisiana, purchase 5,000 cases of free running salt from the Morton Salt Company?

A. No, we did not.

Q. Did you purchase less than 5,000 cases of Morton's free running salt?

A. According to the records furnished me, we purchased 2720 cases in the year 1941.

Q. And received 10-cents allowance from the Morton Salt Company on each of those cases?

A. I am told that we did.

Q. How are the bills paid by the H. G. Hill Stores,
509 Inc., to the Morton Salt Company upon the purchases by the H. G. Hill Stores, Inc.? Are they paid monthly, weekly or at the time the commodity is obtained?

A. I couldn't answer that, that is paid through the accounting department.

Q. Would Mr. Binnings know that, sir?

A. He should. The regular terms are thirty days.

Q. Do you know whether or not your company received a cash discount if the bill was paid in a specified period?

A. We do not receive any cash discount.

Q. I presume that you have competitors?

A. We do.

Q. You do have competitors?

A. Yes.

Q. Would you name some of your competitors here in the New Orleans metropolitan area?

A. The Great Atlantic & Pacific Tea Company, Capitol Stores, Canal-Villere, and all other types of independent and chain competition.

Q. In addition to the retail chain stores such as A&P and Capitol Stores, and Canal-Villere Company, you have throughout the city, independent retail grocerymen who sell groceries, salt, and allied products to the consuming public in competition with your firm?

A. Yes, we have.

510 Q. And they are in large numbers?

A. City-wide.

Q. Do you know approximately how many retail grocerymen are located within the metropolitan area of New Orleans?

A. I have been told somewhere around 1,800 and 2,000 groceries are in New Orleans.

Q. All of those grocery stores are competitors of H. G. Hill Stores, Inc.?

A. They are.

Q. Does H. G. Hill Stores, Inc., do any advertising for the Morton Salt Company?

A. They do.

Q. What type of advertising is done by your firm for the Morton Salt Company?

A. Display advertising, naming the brand of salt and the price.

Q. Do you get paid for that service?

A. As I understand it, the 10-cents per case is a sales promotion allowance.

Q. You were advised of that, sir?

A. I was told that that was the arrangement, that that was a sales promotional allowance.

Mr. McBride: If the Examiner please, I will ask that the witness' answer be stricken with respect to the previous question, in view of his testimony as to lack of

511 knowledge for the basis of the 10-cent discount.

Trial Examiner Purcell: Unless you can develop his particular knowledge, I will strike the answer.

Mr. Haslett: I rather agree with counsel that I feel it should be stricken, because I don't want to get anything in the record that is not based upon the actual knowledge of any witness.

Trial Examiner Purcell: If my memory serves me, the same objection of counsel would apply to the question preceding that.

Mr. McBride: That is correct.

Trial Examiner Purcell: So, I will strike the responses to both questions.

By Mr. Haslett:

Q. I believe you testified, Mr. Sale, that promotional work is done by H. G. Hill Stores, Inc., in behalf of the Morton Salt Company?

A. It is, floor displays and shelf displays and newspaper advertising.

Q. Do you of your own knowledge know whether or not the Morton Salt Company pays H. G. Hill Stores, Inc., money compensation or other types of compensation for this promotional work which you have just described, of your own knowledge, sir?

A. Nothing except what I have been told.

512 Q. Would Mr. Binnings be in better position to testify to that, sir?

A. Well, I couldn't answer for Mr. Binnings, I wouldn't have knowledge of what information he has.

Q. Do the H. G. Hill Stores, Inc., operate any retail units outside of the metropolitan limits of New Orleans?

A. They do.

Q. And would you tell us geographically what radius that includes, I mean, is it a ten mile radius of the city of New Orleans?

A. We have stores in Mississippi, Gulfport, Biloxi, Waveland, Hattiesburg, and also Baton Rouge, Louisiana.

Q. And do you do the purchasing for all of those stores, also, sir?

A. I do.

Q. And they are associated with your organization that has its office here in New Orleans?

A. They are. On your question back there where I answered "I do" on this purchasing, that pertains to salt, because there are other commodities sold which I don't purchase, such as fresh meats and produce, and some grocery items.

Mr. Haslett: That is all, Mr. Examiner.

Trial Examiner Purcell: Any cross?

Mr. McBride: May we go off the record just a moment, Mr. Examiner?

513 Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Cross-Examination by Mr. McBride.

Q. Mr. Sale, will you describe for me once more, please, the precise duties which you perform for the company with which you are associated?

A. I am a buyer.

Q. Do you buy particular lines of commodities offered for sale by your company?

A. I do, yes.

Q. And what is the exact corporate title of the company by which you are employed?

A. H. G. Hill Stores, Inc.

Q. H. G. Hill Stores, Inc.?

A. Yes.

Q. And the headquarters of that company are in the city of New Orleans, as I recall your stating?

A. It is.

Q. And your duties in connection with that company are limited entirely to that of a purchasing agent for certain lines of commodities offered by that company, is that correct?

A. It is, except that I have charge of the merchan-
514 dising end of the business, which pertains to setting of retail prices.

Q. As to the commodities which you buy, is that correct?

A. That is right.

Q. Do you know of your own knowledge, Mr. Sale, whether or not there is any corporate connection or any affiliated connection or arrangement between your company, H. G. Hill Stores, Inc.,—H. G. Hill Stores, Inc., is that right?

A. H. G. Hill Stores, Inc., is our company.

Q. —and Hill Grocery Company of Birmingham, Alabama, and H. G. Hill Stores, Inc., of Nashville, Tennessee?

A. I do not.

Q. You do not?

A. No, sir.

Q. You stated in your direct testimony, Mr. Sale, that after receiving the subpoena, which is the occasion of your being a witness at the moment, that you ascertained through certain channels the fact that your company received a 10-cents per case discount on Morton's free running and Morton's iodized blue package salt, which dis-

count was paid, according to your information, through Nashville, Tennessee. You made that statement, did you not?

A. I did.

Q. Prior to the receipt of the subpoena to which you made reference, and even at the present moment, you
515 do not know of your own knowledge whether or not that 10-cent discount is being paid in the manner you described, is that correct?

A. I did not.

Trial Examiner Purcell: Your answer was, "I do not"?

The Witness: I did not.

By Mr. McBride:

Q. And you do not now know, except in so far as you made inquiry of other persons connected with your company, is that correct?

A. That is correct.

Q. Likewise, Mr. Sale, you do not know of your own knowledge as to the purpose or the occasion or the arrangement whereby that 10-cent discount is presumably paid through Nashville to your company, is that correct?

A. I do not, except what I was told.

Q. So that your information is entirely what you have picked up by some inquiries, is that correct?

A. Yes, that is correct.

Q. And you wouldn't know, for example, whether or not that 10-cent discount is paid for promotional advertising or whether it is paid for quantity purchases, or whether it is paid for any other reason under the sun, except that you have some hearsay knowledge that it has some connection with the purchases of your company, is that right?

A. That is right.

516 Mr. Haslett: I object to the use of the words "hearsay knowledge".

Mr. McBride: I will accept the objection, Mr. Examiner, and correct it.

By Mr. McBride:

Q. Except for the information that has come to your attention as a result of your specific inquiries?

A. That is correct.

Q. And the 10-cents per case to which you have made

reference may or may not have been paid for promotional advertising purposes, so far as you know, is that correct?

A. That is correct.

Q. So far as your own information is concerned, Mr. Sale, the 10-cents may have been paid as a quantity discount offered by the Morton Salt Company to purchases of 5,000 cases or more in any 12 months consecutive period of Morton's free running and Morton's iodized salt?

Mr. Haslett: I object to that, Mr. Examiner. He testified that he doesn't know the reason why it was paid, of his own knowledge, and counsel is now trying to get into the record the reason for the payment of it, and this witness has testified that he doesn't know of his own knowledge why the 10-cents was paid.

Trial Examiner Purcell: I will overrule the objection, because the question is in the negative, and I don't
517 really think that counsel for the respondent may be charged with trying to get anything into the record indirectly.

Mr. Haslett: I don't think that counsel is trying to get anything into the record in an indirect way that he wouldn't try to get in directly.

Trial Examiner Purcell: It is already in the record. The objection is overruled, you may answer, sir.

The Witness: Will you state your question again?

Mr. McBride: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: It could have been.

By Mr. McBride:

Q. Now, you stated, Mr. Sale, I believe, that your company did certain advertising for the Morton Salt Company?

A. Yes.

Q. And you described that advertising as being display work, floor display, poster display, or newspaper advertising, as I recall. Is that correct?

A. I didn't say posters in my original testimony.

Q. Will you describe for me, then, Mr. Sale, the type of advertising work that you had reference to in your direct testimony?

A. Newspaper advertising, floor displays, and shelf displays.

Q. And the newspaper advertising would be, simply

518 the publication of the fact that you were offering Morton salt, the same as you were offering cheese or potatoes, or anything else in your advertising program for your stores, is that correct?

A. That is right.

Q. And the newspaper advertising was not the result of any special or particular arrangement between your company and the Morton Salt Company, is that correct?

A. Not that I know of.

Q. You were simply offering it through the newspaper medium, like you would offer or advertise any other products sold in your stores, isn't that right?

A. State your question again.

(The question referred to was read by the reporter.)

The Witness: That is correct.

By Mr. McBride:

Q. And with respect to the display work to which you referred, you mean by that, do you not, Mr. Sale, display work of Morton's salt, just as you would display and advertise on the floor and in your store any other product offered by your store, isn't that correct?

A. That is correct. When we advertise items in the paper, we display merchandise against that ad.

Q. That arrangement would obtain with respect to any commodities that were being advertised from time to

519 time, isn't that right?

A. Yes, sir.

Q. Just as a matter of merchandising methods?

A. That is correct.

Q. To your knowledge, the Morton Salt Company does not pay your company any money to advertise in the newspapers, or to repair and maintain any floor displays, to which you have testified, is that right?

A. No, as far as I know. All I know is that which I was told about the arrangement.

Mr. McBride: I think I will ask that that answer be stricken, Mr. Examiner, because I am again in the dilemma—

Trial Examiner Purcell: Yes, it leaves the question up in the air on the last remark.

Will you please read the last answer, Mr. Reporter?

(The answer referred to was read by the reporter.)

Trial Examiner Purcell: The answer, "as far as I know", will stand. Strike all of the answer after that.

Is that satisfactory, Mr. McBride?

Mr. McBride: That is satisfactory. I believe that is all, Mr. Examiner.

Mr. Haslett: That is all, thank you.

(Witness excused.)

Mr. Haslett: Come around, Mr. Binnings.

520 C. P. BINNINGS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your name for the record, Mr. Binnings?

A. Clem P. Binnings.

Q. Where do you reside, sir?

A. 379 Broadway, New Orleans, Louisiana.

Q. What business are you engaged in, Mr. Binnings?

A. I am with the H. G. Hill Stores, Inc.

Q. Is that the H. G. Hill Stores here in New Orleans?

A. 1009 South Broad Street, New Orleans.

Q. What position do you hold with that company?

A. Treasurer.

Q. How long have you been treasurer of H. G. Hill Stores, Inc.?

A. About 12 years.

Q. H. G. Stores, Inc., are retail grocery stores, selling direct to the consumers, to the consuming public?

A. Yes.

Q. Is it a corporation, sir?

A. Yes, sir.

Q. Under the laws of what state was it incorporated?

521 A. Louisiana.

Q. And where is the main office located?

A. 1009 South Broad Street, New Orleans.

Q. Has it any branch offices at all?

A. No, sir.

Q. Mr. Binnings, I hand you Commission's Exhibit No. 42, and ask you to direct your attention to the name of

the grocery company, the fourth from the bottom on the fourth page, where it says "Hill Grocery Company of Birmingham, Alabama," and "H. G. Hill Stores of Nashville, Tennessee."

Is the H. G. Hill Stores, Inc., of New Orleans connected with the H. G. Hill Stores, of Nashville, Tennessee?

A. No, sir.

Q. Any legal connection whatsoever?

A. None.

Q. Do they have the same officers and directors?

A. None.

Q. Now, the H. G. Hill Stores, Inc., of New Orleans, Louisiana, is it connected with the Hill Grocery Company of Birmingham, Alabama?

A. No.

Q. No legal connection whatsoever?

A. None whatever.

Q. No interlocking directorates?

A. None.

522 Q. No interlocking ownership of stock?

A. None.

Q. Your company purchases salt from the Morton Salt Company, does it?

A. Yes.

Q. And does it purchase the round package free running salt, blue label salt, as shown on Commission's Exhibit No. 29, which I hand you herewith?

A. Yes, sir.

Q. It also purchases the Morton Round package blue label iodized salt?

A. I am not familiar with that, that is not in my department.

Q. Does your company receive any discount allowance of any sort from the Morton Salt Company?

Mr. McBride: If the Examiner please, I object to that question. The witness has just testified that he doesn't even know whether his company purchases Morton salt.

Mr. Haslett: I think you misunderstood him. He said he did purchase Morton salt.

The Witness: We purchase Morton salt, but I don't know what kind of type.

Mr. McBride: I will withdraw my objection.

Trial Examiner Purcell: Let the record show the objection is withdrawn.

523 By Mr. Haslett:

Q. Does your company receive any discount or allowance of any sort from the Morton Salt Company upon any of its purchases?

A. We receive a check from Nashville.

Q. And do you know what that check is for, sir?

A. Well, they simply send a summary showing an allowance of 10-cents per case, that is all I know what it is.

Q. On Morton's salt?

A. For account of Morton Salt Company.

Mr. McBride: If the Examiner please, as a technical objection, I will ask that the answer be stricken, unless he identifies who he means by "they"; the witness in his answer said "they simply send a check".

By Mr. Haslett:

Q. When you say "they", who do you mean, sir?

A. H. G. Hill Company, in Nashville.

Q. Nashville, Tennessee?

A. Nashville, Tennessee.

Q. And you receive a check from them upon the purchases of H. G. Hill Stores, Inc., of New Orleans, Louisiana, of Morton's salt?

A. It simply states "For account of Morton Salt."

Q. Ten cents per case?

A. Ten cents per case.

524 Q. Do you know why you receive that, sir?

A. No, sir, I don't know what it is for.

Mr. McBride: I object to that question. The witness has already answered the same question.

Trial Examiner Purcell: Objection sustained.

By Mr. Haslett:

Q. Does your company do any promotional work in connection with the resale of Morton's salt through its retail stores to the consuming public?

A. That is not in my department. I can't say.

Q. How are the bills paid to the Morton Salt Company, by H. G. Hill Stores, Inc., of New Orleans, Louisiana? Are they paid monthly or weekly?

A. They are paid monthly.

Q. They are paid monthly?

A. Yes, sir.

Q. Does your company receive any discount if the bill is paid within a specified time?

A. No.
Q. No cash discount?
A. No cash discount.
Q. Who is the president of your company, sir?
A. W. E. Penick.
Q. Is he located in New Orleans, Louisiana?
A. Yes, sir.
525 Q. Who is Mr. Williams?
A. Claude M. Williams?
Q. Yes.
A. Vice-president.
Q. He is vice-president?
A. Yes.
Q. And he is located also in New Orleans?
A. Yes.
Q. Mr. Binnings, does your company place its orders for requirements of Morton salt with H. G. Hill Stores, Inc., of Nashville, Tennessee?
A. I can't say, that is not in my department.
Q. Do you know whether it places its orders for any requirements of Morton's salt with the Hill Grocery Company of Birmingham, Alabama?
A. I can't say.
Q. Do you have any relations or any dealings with the H. G. Hill Stores, Inc., of Nashville, Tennessee? Do you have any dealings with them at all?
A. Sometimes we might buy a few stationery supplies, and stuff like that, from them.
Q. And do you have any dealings at all with the H. G. Hill Grocery Company of Birmingham, Alabama?
A. No, sir.
Q. Do you buy any supplies from them?
526 A. No, sir.
Q. Is this check that is received upon the purchases of the H. G. Hill Stores, Inc., of Morton Salt from the Nashville H. G. Hill Stores, Inc., on the form used by Morton Salt Company, or is it Morton Salt Company's check, or the H. G. Hill Stores' check that you receive?
A. It is neither one, it is H. G. Hill Company, of Nashville, Tennessee.
Q. Will you describe in some detail, if you can, what statement comes with that check, if you know? Does the statement show the number of cases of salt sold by the Morton Salt Company to the H. G. Hill Stores, Inc., of New Orleans, Louisiana?

A. The last one we received was simply a pencil memorandum showing the months and the number of cases.

Q. And the name Morton Salt Company appeared on it?

A. No, sir.

Q. You don't know what it was for, then, do you, sir?

A. Well, it said "10-cents per case," and that is all.

Q. How long has that been going on, sir?

A. I can't recall. Several years.

Q. Do you recall at any time whether the statement would show the name "Morton Salt Company" upon it?

A. I can't remember, except the last one. Beyond that, I don't remember.

527 Trial Examiner Purcell: The preceding question was confined to the last statement of the Morton Salt Company. So far as the last statement was concerned, then, taking your word for it, sir, it might just as well have been a case of peas or tomatoes? How did you identify it as Morton Salt Company?

The Witness: We had received previous memorandums.

Trial Examiner Purcell: Well then, you checked up with another paper?

The Witness: Yes.

Trial Examiner Purcell: Having to do with the same transaction?

The Witness: Yes.

Trial Examiner Purcell: Could you give us the names of your officers and of your directors?

The Witness: W. E. Penick, president, C. M. Williams, vice-president, E. J. Pitts, Secretary, C. P. Binnings, treasurer, and Mrs. W. E. Penick, chairman of the Board.

Trial Examiner Purcell: Now, your principal stockholders?

The Witness: W. E. Penick and Mrs. W. E. Penick.

Trial Examiner Purcell: Is it practically a closed corporation?

The Witness: Yes.

Trial Examiner Purcell: Now, your functions as
528 treasurer of the company is to supervise all of its accounts?

The Witness: That is right, sir.

Trial Examiner Purcell: And its accounting methods?

The Witness: Yes, sir.

Trial Examiner Purcell: All right.

By Mr. Haslett:

Q. When you pay for your requirements Morton's salt, is the check made payable to the New Orleans office of the Morton Salt Company?

A. I know it is payable to Morton Salt Company, but I don't know to what office it is mailed to.

Q. It is payable to Morton Salt Company?

A. Yes.

Q. Now, you testified in answer to a question propounded to you by the Examiner, that you have under your supervision the accounts, books and records of the H. G. Hill Stores, Inc., that is true, is it not?

A. Yes.

Q. Will you state how the 10-cent allowance per case that you receive from the H. G. Hill Stores, Inc., of Nashville, Tennessee, is carried on those books?

A. It is credited to allowances.

Q. Allowances?

A. Yes.

Q. And when the check comes in from the H. G. Hill Stores, it is shown on Morton's account?

A. We don't carry accounts for individual vendors.

Q. It would just be under the general heading of "Allowances" with other allowances received from other corporations, is that correct?

A. That is right.

Q. But is it also designated "Morton allowance," or what designation do you have for it, sir, when you put it on the books?

A. Just "allowance."

Q. I mean, you have allowance for Libbey, McNeil & Owens, and other companies. Do you put the name of the company beside the allowance that you receive?

A. No.

Q. How do you determine, or how did you determine that the allowance or the check that you received from the H. G. Hill Stores, Inc., of Nashville, Tennessee, was a Morton discount upon the purchases of H. G. Hill Stores of New Orleans?

A. The Nashville office sent a memorandum showing the month and the cases, and the total cases agreed with the check.

Q. Of Morton's salt, Morton Salt Company?

A. No, H. G. Hill Company, Nashville, Tennessee.

Q. I mean, would the memorandum show that the allowance was on Morton's salt?

A. No.

530 Q. So, you don't know whether it was on Morton's salt, or on peas, or something else? How did you determine it was on Morton Salt?

A. Because we had received previous remittances, and I knew from remembering that it was a Morton Salt allowance.

Q. And you are ready to testify definitely that it was a Morton Salt allowance?

A. Yes.

Q. Does your company, and any officers, directors or stockholders of the H. G. Hill Stores, Inc., in New Orleans have anything to do with the operations and management, the control of the H. G. Hill Stores, Inc., of Nashville, Tennessee?

A. None whatever.

Q. Do any of the officers, directors, stockholders or employees of the H. G. Hill Stores, of New Orleans, have anything to do with the Hill Grocery Company of Birmingham, Alabama?

A. None.

Q. They are separate and distinct corporations operating under their own management, is that right, sir?

A. Yes, that is correct.

Q. Do you know anything about the promotional work done by your company in connection with the sale of Morton's salt?

Mr. McBride: If the Examiner please, I believe 531 the witness has answered that.

Mr. Haslett: I will withdraw that question. That is all, sir.

Trial Examiner Purcell: Mr. Binnings, tell us, if you please, sir, just exactly what your connection is with the H. G. Hill Stores of Birmingham, Alabama, and also of Nashville. Now, you must have some connection, because you are in correspondence with them and you are receiving checks from them. Now, tell us exactly what that connection is in both instances.

The Witness: You mean, the present connection?

Trial Examiner Purcell: Is there a distinction between the present connection and connections in the past?

The Witness: Yes.

Trial Examiner Purcell: Tell us what the past connections were.

The Witness: Well, Mr. H. G. Hill, president of the H. G. Hill Company, Nashville, Tennessee, formerly owned some stock in the H. G. Hill Stores in New Orleans.

Trial Examiner Purcell: When was this?

The Witness: In 1922. That stock was transferred to the H. G. Hill Company of Nashville, Tennessee. It was later transferred to the Nashville Trust & Banking Company of Nashville, trustees.

Trial Examiner Purcell: Approximately when?

532 The Witness: Oh, that was back in about 1928.

Trial Examiner Purcell: Trustee for whom?

The Witness: For Mrs. W. E. Penick.

Trial Examiner Purcell: Who is the Mrs. W. E. Penick referred to as chairman of the Board here in New Orleans?

The Witness: Yes.

Trial Examiner Purcell: Continue, sir.

The Witness: And about ten years ago that stock was transferred to Mrs. W. E. Penick, who is the wife of Mr. W. E. Penick.

Trial Examiner Purcell: And what is the present connection between the three companies?

The Witness: Well, that is the only connection there is.

Trial Examiner Purcell: Why are you receiving checks from the Nashville concern from time to time? You must have business transactions of some sort if you are receiving checks. People don't just send checks for the pleasure of sending them and making gifts of them. Now, tell us what the connection is, please, sir. Are they purchasing agents for you, or what are they?

The Witness: We have our own purchasing department here in New Orleans. I don't know what the deal is on this Morton Salt Company, why we receive the checks.

533 Trial Examiner Purcell: Is it possible, sir, that as treasurer of the local company you are accepting checks from month to month that you don't know why they are being paid to you? That doesn't sound reasonable, does it?

The Witness: Well, they only send one check a year, at the end of the year.

Trial Examiner Purcell: Well, even so?

The Witness: Well, I know that that is an allowance from Morton Salt Company.

Trial Examiner Purcell: Then, why should it come through the Nashville office?

The Witness: I don't know, sir.

Mr. Haslett: Mr. Examiner, I would like for the record to show my general objection to the Examiner's line of questioning to this witness. This witness was called on behalf of the Commission's case, not the respondent's.

Trial Examiner Purcell: Would you tell us, please, the authorized capital stock of your present corporation, of your local corporation?

The Witness: The authorized capital stock is $650,000.

Trial Examiner Purcell: Incorporated under the laws of what state?

The Witness: Louisiana.

Trial Examiner Purcell: All right.

534 By Mr. Haslett:

Q. Mr. Binnings, I believe you testified in response to a number of my questions, and also the Examiner's questions, that you know of no connection between your company and the H. G. Hill Stores, Inc., of Nashville, or the Hill Grocery Company of Birmingham, Alabama, is that correct?

A. Yes, sir.

Q. Any and all connections legally that may have occurred, were prior to the passage of the Robinson-Patman Act, that is, on June 19, 1936, is that correct?

Mr. McBride: I object to that question, Mr. Examiner, because the witness has disclosed a knowledge of some connection currently and past; and I don't believe the question now is proper that requires a yes or no answer, in view of the development of the witness' knowledge.

Trial Examiner Purcell: I think that the testimony already given answers that question, Mr. Haslett.

By Mr. Haslett:

Q. Since June 19, 1936, has there been any interlocking stock ownership of the H. G. Hill Stores, Inc., of New Orleans, Louisiana, and of the H. G. Hill Stores, Inc., of Nashville, Tennessee?

Mr. McBride: If the Examiner please, I will object to that. The word "interlocking" may mean any one of a number of things. Mr. Haslett is permitted to develop
535 it, but not to inject legal conclusions in the question.

Trial Examiner Purcell: The word "interlocking" is used in the statute, is it not, Mr. Haslett?

Mr. Haslett: That is right.

Trial Examiner Purcell: I will overrule your objection.

By Mr. Haslett:

Q. Can you answer that?

A. Well, before 1936, Mr. H. G. Hill owned one share of stock to qualify as a director.

Q. A director of what, sir?

A. A director of H. G. Hill Stores in New Orleans. Several years ago he resigned as a director.

Q. Was that prior to June 19, 1936?

A. Several years ago. I don't know how long, exactly.

Q. He is not now a director of the H. G. Hill Stores, Inc., of New Orleans, Louisiana?

A. No, sir, he is not.

Mr. Haslett: That is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Binnings, are you familiar with the entire list of securities owned by Mr. W. P. Penick at the present time, his personal holdings?

536 A. No, sir.

Q. Are you familiar with the entire list of securities owned personally by Mrs. Penick?

A. No, sir.

Q. At the present time?

A. No, sir.

Q. Do you know of your own knowledge, Mr. Binnings, what securities Mr. Penick may have held from time to time during the past six or seven years?

A. No, sir, I have no knowledge of that.

Q. And that would also be true as to your knowledge with respect to Mrs. Penick?

A. That is right.

Mr. Haslett: Mr. Examiner, at this time I want to object to this line of testimony, on the ground, first, that it is beyond the scope of direct examination, and on the second ground that this witness is not a respondent in this case and is not charged with the violation of any law. Any stock ownership of the president of this company or the secretary-treasurer of this company has nothing to do with the issues of this case. The only relevant testimony is whether or not he is receiving the 10-cent allowance per

case, and whether or not he is purchasing the required amount, and the record is clear on that.

Mr. McBride: Mr. Examiner, if I may be heard on
537 that. This witness has testified that there was no connection, stock ownership or otherwise, except as he amplified that somewhat in response to your questions, between the three various Hill Companies under discussion. I think it is entirely proper to demonstrate that his knowledge of an interlocking stockholding,—using Mr. Haslett's terminology,—could be effective today without this witness knowing anything about it, with respect to the officers of his own company. I am not seeking to find out what stocks Mr. and Mrs. Penick hold, I am not seeking to embarrass the witness' company, I am seeking to demonstrate that his answer may have been improper, that there is no interlocking stockholding, therefore, I think the question is entirely proper and within the scope of the direct examination.

Trial Examiner Purcell: You asked the witness if he was familiar with the entire stock holdings of Mr. Hill and Mrs. Hill?

Mr. McBride: No, Mr. Penick and Mrs. Penick.

Trial Examiner Purcell: I beg your pardon, Mr. Penick and Mrs. Penick. Did you mean the stockholdings in the local company?

Mr. McBride: No, I simply asked if he knew their listed securities.

Trial Examiner Purcell: Well, I think that is certainly without the scope of the direct examination.

538 Mr. McBride: I don't think so. If the witness does not know the entire list of these people's personal securities, I don't see how he could testify that they own no stock in either of these other two Hill Stores, and I am vitally interested in making certain whether the witness' answer is correct or incorrect in response to direct examination.

Trial Examiner Purcell: Well, he might know the entire stock holdings of the two parties in question in the corporations in question, and not know all of the other stock holdings, so, therefore, I think your question is improper from any point of view in this case.

Mr. McBride: I don't think so, Mr. Examiner, unless he can demonstrate that he is a confidant of these two people with respect to all of their stock holdings, for all he

may know, they may have a secret interest in these companies. Unless he can demonstrate a thorough and entire familiarity with their stock holdings, I think I can prove he is going far from the scope of his knowledge. He has stated flatly there is no interlocking stock holdings, except as he has qualified in response to your question. I think I am entitled to go further on that.

Trial Examiner Purcell: He testified as to that on direct examination by Mr. Haslett, not only on my questions, but Mr. Haslett's examination, also. I will uphold Mr.
539 Haslett's objection to your inquiry into their entire stock holdings, and if you will limit yourself to the stock holdings of the parties in question to the three corporations, I will permit you to inquire.

By Mr. McBride:

Q. Mr. Binnings, it would be possible, would it not, for Mr. W. P. Penick, the president of your company, to hold stock in the Hill Grocery Company of Birmingham, Alabama, without your knowledge, is that correct?

A. That is possible.

Q. And likewise with respect to stock in H. G. Hill Stores, Inc., of Nashville, Tennessee, is that correct? He could hold stock in that company without your knowing about it?

A. There is something here I would like to clear up. You call that H. G. Hill stores, Inc., Nashville. There is no such corporation. It is the H. G. Hill Company of Nashville, Tennessee.

Q. Well, I will be happy to have that cleared up, Mr. Binnings.

A. It is H. G. Hill Company in Nashville, Tennessee.

Q. H. G. Hill Company of Nashville?

A. H. G. Hill Company, located in Nashville, Tennessee.

Q. Now, the H. G. Hill Company, that is the proper corporate name of the company located at Nashville, Tennessee?

A. That is right.

540 Q. And that is incorporated under what state?

A. I don't know positively.

Q. Mr. Haslett: Well, don't answer if you don't know.

The Witness: I don't know.

By Mr. McBride:

Q. Now, will you give me the proper name, Mr. Binnings, the proper corporate name of the company located at Birmingham, Alabama?

A. H. G. Hill Grocery Company.

Q. H. G. Hill Grocery Company?

A. Yes, sir.

Q. They are both corporations, are they not?

A. Yes, sir.

Q. Will you answer my previous question, Mr. Binnings, substituting for whatever corporate name I gave? It will be possible, then, for Mr. Penick to hold stock in the H. G. Hill Company, of Nashville, Tennessee, or in the H. G. Hill Grocery Company of Birmingham, Alabama, either or both, wthout you knowing about it, is that correct?

A. Yes.

Q. And would that same statement be true with respect to Mrs. Penick?

A. Yes.

Q. Would it be possible, for that matter, Mr. Binnings, for Mr. Claude M. Williams, your vice-president, or
541 Mr. E. J. Pitts, likewise to hold stock in either of those companies, the one at Nashville or the one at Birmingham without your knowing about it?

A. That is right.

Q. Would it be possible for any of your officers or directors to be a director on either of the two companies, the one at Nashville, or the one at Birmingham, without your knowing about it?

A. Possibly; but not very probable.

Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Binnings, Mr. McBride has been asking you some questions as to whether or not it would be possible for Mr. Penick to hold stock in the Nashville organization or the Birmingham organization.

A. Yes, sir.

Q. I will ask you whether or not Mr. or Mrs. Penick, to your knowledge, own stock in the H. G. Hill Company of Nashville, Tennessee?

A. Not to my knowledge.

Q. Well, does Mr. Penick or Mrs. Penick own stock in

the H. G. Hill Grocery Company of Birmingham, Alabama, to the best of your knowledge?

A. Not to my knowledge.

542 Q. Is that also true as to Mr. Pitts and Mr. Williams?

A. Yes.

Q. To your knowledge, is Mr. Penick a member of the board of directors of the Nashville organization, H. G. Hill Company of Nashville, Tennessee?

A. I am sure that he is not. He would have said something if he was.

Q. And is he a member of the board of directors of the H. G. Hill Grocery Company of Birmingham, Alabama?

Mr. McBride: I object to that, unless it is added, to the witness' knowledge.

By Mr. Haslett:

Q. To the best of your knowledge.

A. To the best of my knowledge, he is not.

Q. And is Mr. Williams a member of the board of directors of the H. G. Hill Company of Nashville, Tennessee, to the best of your knowledge?

A. To the best of my knowledge, no.

Q. And is Mr. Williams a member of the board of directors of the H. G. Hill Company of Birmingham, Alabama, to the best of your knowledge?

A. To the best of my knowledge, no.

Q. Would the same be true as to Mr. Pitts?

A. That is right.

Q. Now, what is the business, if you know, sir, of
543 the H. G. Hill Grocery Company of Nashville, Tennessee?

A. They are retail chain grocers.

Q. And they operate retail grocery stores in and around Nashville, Tennessee?

A. That is right.

Q. What is the business of the H. G. Hill Grocery Company of Birmingham, Alabama?

A. They are retail chain grocers.

Q. The same type of business as the H. G. Hill Stores, Inc., of New Orleans, are engaged in?

A. Yes.

Q. Selling groceries and allied products to the consuming public?

A. Right.
Mr. Haslett: I think that is all, sir.
Mr. McBride: Just one final question, Mr. Examiner.

Recross-Examination by Mr. McBride.

Q. Does your company, Mr. Binnings, maintain a warehouse in New Orleans?
A. In New Orleans?
Q. Yes.
A. Yes.
Q. For the purpose of serving its stores in this territory?
A. That is right.
544 Mr. McBride: That is all.
Mr. Haslett: Just one or two more questions, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. When the bills are paid by your firm for Morton salt, do those bills come from the New Orleans office, or do they come from the Chicago office, if you know, sir?
A. I don't know positively.
Q. Do they come from the H. G. Hill Company of Nashville, Tennessee?
A. No, sir.
Mr. Haslett: That is all, sir.
Mr. McBride: No further questions.
(Witness excused.)
Mr. Haslett: Mr. Examiner, I would like for the record to show that I am recalling for further examination, Mr. Stratford, general sales manager of the Morton Salt Company, who has his principal office and place of business at Chicago, Illinois.

HERBERT RIDLEY STRATFORD, was thereupon recalled as a witness for the Commission, having been previously duly sworn, testified further as follows:

545 *Direct Examination by Mr. Haslett.*

Q. Mr. Stratford, is Capitol Stores, Inc., of Baton Rouge, Louisiana, a customer of Morton Salt Company?

A. Yes, sir.

Q. And that is the same company that operates retail stores in the metropolitan area of New Orleans?

A. I believe it is.

Q. Does Morton Salt Company make any adjustment on sales of round package free running salt to the Capitol Stores?

A. Yes, sir.

Q. And how much is that adjustment?

A. It amounts to 7½ cents per container.

Q. And is that being done at the present time?

A. Yes, to my knowledge, it is.

Q. And do you know how long that has been in effect?

A. No, sir, I don't know that, I would have to check our records.

Q. Will it be possible for you to check the records?

A. I believe so.

Q. And advise the Commission's counsel at some later date, sir?

A. I would be glad to.

Q. Do you know the quantity of Morton's free running salt purchased by the Capitol Stores, Inc., at Baton
546 Rouge from the Morton Salt Company?

A. No, sir, I do not.

Q. Would it be possible to obtain that information for the years 1936, 1937, 1938, 1939 and 1940?

A. I believe so, sir.

Q. My questions propounded to you at this time have particular reference to Morton's free running and Morton's iodized salt packaged under the blue label. Is that what you have been testifying to?

A. That has been my impression.

Mr. Haslett: That is all, sir.

Mr. McBride: No cross.

(Witness excused.)

Mr. Haslett: Mr. Sanches, come around and take the stand, please.

WALTER J. SANCHES was thereupon called as a witness by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your name for the record, please, sir?

A. Walter J. Sanches.

Q. And where do you reside, Mr. Sanches?

547 A. Baton Rouge, Louisiana.

Q. And what business are you engaged in?

A. I am an accountant.

Q. I see.

A. I am also connected with one of the companies—I am connected with the Capitol Stores.

Q. I see.

A. I am secretary-treasurer of Capitol Stores.

Q. And where is the main office of Capitol Stores?

A. 420 North 14th Street, Baton Rouge, Louisiana.

Q. Is that a corporation?

A. Yes, sir.

Q. Under the laws of what state is it incorporated?

A. Louisiana.

Q. What is the business of Capitol Stores, Inc.?

A. It operates retail food stores.

Q. Retail food stores?

A. Yes, sir.

Q. And they sell groceries and allied products direct to the consuming public?

A. Yes, sir.

Q. Does it operate any wholesale stores?

A. No.

Q. And how many retail stores are operated by the Capitol Stores, Inc.?

548 A. Thirty-seven, I believe.

Q. And are they all located within the city limits of New Orleans?

A. No.

Q. Have you some in Baton Rouge?

A. Yes.

Q. How many stores are operated in Baton Rouge?

A. Sixteen.

Q. And how many in New Orleans?
A. Fifteen.
Q. And would you tell us what other territories you operate stores in?
A. Hammond, Port Allen, Thibodeaux, Louisiana, and Donaldsonville, Louisiana.
Q. All of them within the state of Louisiana?
A. Yes, sir.
Q. Does your company purchase salt from the Morton Salt Company?
A. They do.
Q. Does your company purchase Morton's free running and iodized salt in the blue label package?
A. They purchase free running and iodized, blue label, yes, I remember that.
Q. Does your company have competitors?
A. Yes, sir.
549 Q. Is the A&P Tea Company one of your competitors?
A. Yes, sir.
Q. H. G. Hill Stores, are they one of your competitors?
A. Yes, sir.
Q. And would you name some other chain competitors?
A. Bet-R Stores, Baton Rouge. It is a local chain and a Louisiana corporation.
Q. In Baton Rouge?
A. In Baton Rouge.
Q. And then you have other chains operating in New Orleans, also?
A. Well, Hill and A&P, as far as my knowledge is concerned, are the largest competitors. I am not familiar with the other stores here.
Q. And in addition to the chain stores, you have independently owned retail stores that sell groceries, salt and allied products directly to the consuming public?
A. In other localities in which we are located.
Q. And they are also competitors of yours?
A. Yes, sir.
Q. Do you know how long you have been a customer of Morton Salt Company?
A. I have been secretary and treasurer of the Capitol Stores since 1931. To the best of my knowledge, we have been buying Morton salt all that time.
550 Q. Since that time?

A. Since that time.
Q. And you are now purchasing Morton salt?
A. Yes, sir.
Mr. Haslett: I think that is all, Mr. Examiner.

Cross-Examination by Mr. McBride.

Q. Just one question, Mr. Sanches. Does your company maintain a warehouse in New Orleans?
A. Yes.
Q. Out of which it serves its stores operating in the city of New Orleans?
A. Yes, sir.
Q. Do you also maintain a warehouse in Baton Rouge?
A. That is our main warehouse, yes, sir.
Q. And that serves the purpose of distributing the products that your company sells to the various retail outlets, is that correct?
A. That is correct. Of course, then, we had a chain merchandise, too, from one place to the other. If one is short, why, we transfer it.
Q. And you use your warehouse facilities for that purpose?
A. That is right.
Mr. McBride: I believe that is all.
(Witness excused.)
551 Mr. Haslett: I would like the record to show that Mr. Stratford is again called to the stand for direct examination.

HERBERT RIDLEY STRATFORD was thereupon recalled as a witness for the Commission, having been previously duly sworn, and testified further as follows:

Direct Examination.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 67.
(The document referred to was marked "Commission's Exhibit No. 67" for identification.)
Mr. Haslett: Mr. McBride, am I correct in stating it is stipulated by and between counsel for the Commission and

counsel for the respondent that the document marked for identification as Commission's Exhibit No. 67 is a true and correct compilation of the total dollar volume of sales made by the Morton Salt Company to the Consolidated Companies, Inc., and branches, billed out of the New Orleans office of the Morton Salt Company?

Mr. McBride: Yes, sir.

Mr. Haslett: For the years 1937, 1938, 1939, and 1940?

Mr. McBride: That is right.

552 Trial Examiner Purcell: The instrument just described will be received in evidence and marked by the reporter as Commission's Exhibit No. 67.

(The document referred to, heretofore marked "COMMISSION'S EXHIBIT 67" for identification, was received in evidence.)

By Mr. Haslett:

Q. Mr. Stratford, I hand you Commission's Exhibit No. 67, and ask you to state whether or not the Consolidated Companies, Inc., purchased during any of the years 1937, 1938, 1939, and 1940, an amount in dollars and cents equal to 5,000 cases of Morton's free running salt during a 12 consecutive months period?

A. They are not so indicated by the figures on this exhibit.

Q. Consolidated Companies receives a 7½ cents allowance per case on each case of Morton's free running and iodized salt packaged under the blue label that is sold to Consolidated Companies by the Morton Salt Company, is that correct, sir?

A. They receive such competitive adjustment.

Q. Has the Morton Salt Company made known to other of its customers that it gives 7½ cents per case allowance on salt in less than 5,000 cases?

A. Will you repeat that question?

Mr. Haslett: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

553 The Witness: It does not give such an allowance.

By Mr. Haslett:

Q. Well, you testified that you give the Consolidated Companies a 7½-cents per case allowance on Morton's free running and Morton's iodized salt packaged under the blue labels.

A. We consider that as a competitive adjustment.

Q. And is there any other instance that the Morton Salt Company makes such an allowance to customers of the type and amount that is made to Consolidated Companies, Inc.?

A. No, sir.

Q. Does the trade in general in the New Orleans territory, if you know, sir, know that the Consolidated Companies, Inc., are getting the 7½-cents allowance?

A. That, I do not know.

Q. Has the Morton Salt Company endeavored to keep the knowledge of the 7½-cents allowance given to Consolidated Companies, Inc., Plaquemine, Louisiana, a secret?

A. I wouldn't say it is done one way or the other.

Q. You wouldn't say it is publicised or you wouldn't say it is kept a secret?

A. That is correct.

Q. Do you know whether or not the trade in New Orleans knows anything about that?

A. No, I don't know.

554 Mr. McBride: If the Examiner please, that question has already been asked and answered, I believe, and I object to it.

By Mr. Hasleft:

Q. I believe you stated, though, that no other customer other than the Consolidated Companies, were getting the 7½-cents per case allowance?

A. Not to my knowledge.

Q. And that is true to any customer of the Morton Salt Company, not only in this territory, but in other territories?

A. Correct.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 68.

(The dcoument referred to was marked "Commission's Exhibit 68" for identification.)

Mr. Hasslett: Mr. McBridge, am I correct when I state that the document marked as Commission's exhibit No. 68 is "Supplement U, Scale LS-4" under date of May 22, 1939, and is a supplement to that particular scale of prices?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: The document described will be received in evidence and marked Commissions' ex-
555 hibit No. 68.

(The document referred to, heretofore marked for identification as "COMMISSION'S EXHIBIT 68" was received in evidence.)

By Mr. Haslett:

A. Mr. Stratford, do you know the amount of brokerage paid by Morton Salt Company on its blue label round package and free running and iodized salt?

A. Yes.

Q. What is the amount of brokerage paid, sir?

A. Five-cents per container.

Q. Five-cents per container?

A. Yes.

Q. And when you say "per container," what do you mean, sir?

A. A container of 24 twenty-six ounce Morton's free running and Morton's iodized.

Q. And that is the general brokerage paid by your company on such products?

A. That is correct.

Q. You obtained that information at my request?

A. Yes, sir.

Q. Mr. Stratford, does the Morton Salt Company pay, grant, allow money compensation, or goods, and when I say "goods", I mean free goods of any kind, to any of its customers in payment for the advertising for Morton's 556 salt by such customer?

A. Referring to advertising in newspapers or handbills?

Q. That is right, yes.

A. We make no such payments.

Q. Is that also true as to display services furnished in connection with the sale of Morton salt by any of the Morton Salt Company's customers, that is, counter displays and window displays?

A. We did have a floor display allowance in the East, a while back.

Q. Well, that was formerly testified to by Mr. Peterkin. I think the record is clear on that. Other than the floor display allowance, does the Morton Salt Company make any allowance to customers in this area for counter displays or window displays?

A. It does not.

Mr. Haslett: I think that is all, Mr. Stratford, thank you very much.

Cross-Examination by Mr. McBride.

Q. Just one question, Mr. Stratford. When you testified in response to one of the questions by counsel for the Commission that Morton Salt Company paid a brokerage of 5-cents a container on Morton's free running and Morton's iodized blue package salt, you had reference only to the
557 situations where a brokerage was paid and you did not mean to testify that on all sales of such containers a 5-cent brokerage was paid, is that correct?

A. That is correct.

Mr. McBride: That is all.

Trial Examiner Purcell: All right, you are excused.

(Witness excused.)

558 Mr. Haslett: Mr. Toups, will you come around, please?

LESTER J. TOUPS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Toups?

A. Lester J. Toups.

Q. And where do you reside, sir?

A. 1810 Marengo.

Q. Is that in the city of New Orleans.

A. Yes, sir.

Q. What business are you engaged in?

A. The wholesale grocery business.

Q. What what company are you connected?

A. Interstate Wholesale Groceries, Inc.

Q. And what position do you hold with that company?

A. Assistant treasurer.

Q. What is the business of the Interstate Wholesale
559 Grocery Company?

A. We handle a complete line of groceries and

allied products, such as building materials, liquor, and so forth.

Q. Do you sell only at wholesale, sir?

A. That is right.

Q. Do you have any retail outlets associated with you?

A. We do not.

Q. And where is the main office of the Interstate Wholesale Grocery Company?

A. 435 Melponen Avenue.

Q. Is that in the city of New Orleans?

A. Yes.

Q. And has it branches in other cities, other than the city of New Orleans?

A. It has. Now, wait, let me correct myself on that. We have no branch in New Orleans, only the executive offices. We operate at country points, we have five branches.

Q. Where are they located?

A. Covington, Louisiana, Thibodeaux, Louisiana, Homer, Louisiana, Morgan City, Louisiana, and New Iberia, Louisiana.

Q. Will you name some of your competitors in each of those territories, if you can, sir?

A. Well, our principal competitors where we operate are the Consolidated Companies, and we have the Edward E. Hebert Company at Thibodeaux, and we have numer-
560 ous competitors operating out of New Orleans. Some of the leading wholesale grocers here cover our territory.

Q. Will you name some of those competitors?

A. I would say Joe Fraering & Company. I wouldn't be positive if he covers our entire territory, but he does cover La Fourche Parish and Terrebonne Parish, and I believe St. Tammany Parish.

Q. And could you name some other competitors operating out of New Orleans that sell in the same localities that you do, sir?

A. Well, offhand, I wouldn't be positive of any in particular.

Q. But you do encounter the competition of the Frearing Company?

A. Joe Fraering Company, yes.

Q. And also the Consolidated Companies, Inc.?

A. That is right.

Q. Do you have Consolidated Companies, Inc., in all of the areas where your products are marketed?

A. That is correct.

Q. How long have you been connected with that company, sir?

A. I have been here with the Interstate since 1929.

Q. And you have been in the grocery business prior to that time, sir?

A. Yes, sir, since 1911.

561 Q. Does your company purchase salt from the Morton Salt Company?

A. We do.

Q. What type of salt is purchased by your company from the Morton Salt Company?

A. We purchase various types, bulk salt in 100 pound bags, 25 pound bags and package salt, such as Morton's iodized salt, and free running salt.

Q. That is under the blue label, the round package blue label?

A. Yes, it is in round packages, it is one pound and ten ounces.

Q. Do you know the price that your company pays for Morton's free running and Morton's iodized salt, blue label round package, per case?

A. Yes, our cost on that particular salt is $1.60 delivered to the various branches in LCL lots, and $1.50 in carload lots delivered.

Q. Does your company purchase any salt from the Morton Salt Company on a carload basis?

A. Yes, we do.

Q. Does the Interstate Wholesale Grocery Company receive any discount or allowance of any kind from Morton Salt Company?

A. No, sir, none whatever.

562 Q. Do you know the resale price of the Morton's free running and iodized salt charged by your company to its customers?

A. Yes, I examined the records, and I found that at Covington, we get $1.75 a case, at Morgan City, where they buy in LCL quantities, we get $1.80, and at Homer, we get $1.90. They also buy in small quantities.

Q. Has Morton Salt Company ever offered to grant a discount or allowance to your company on its purchases of Morton salt?

A. When you say "ever," do you mean in recent years?

Q. Yes, since 1936.

A. Not to my knowledge.

Q. To your knowledge, since June 19, 1936, has your company requested a discount from the Morton Salt Company?

A. I wouldn't be positive as to the year, but before the Robinson-Patman Bill, we did get some allowances on salt.

Q. I see, but since the passage of the Robinson-Patman Act, you have not received any allowance on the Morton salt, from the Morton Salt Company?

A. We have not, sir.

Q. Is the Du Pont Wholesale Grocery Company a branch of the Interstate?

A. Yes.

Q. And is it a member of that organization, or is
563 it a branch of it?

A. Just a branch.

Q. In each of the towns that the Interstate Wholesale Grocery Company operates, do they operate under another name, other than Interstate?

A. They do.

Q. Would you name for us—I think you just have a few branches,—would you name them for us?

A. Yes, there are five.

Q. Would you give us the name of each branch, and the towns where such branches operate?

A. I would be glad to. Covington Grocery & Grain Company, Covington, Louisiana; Percy-Lobdell Company, Thibodeaux, Louisiana, and the Du Pont Wholesale Company at Homer, Louisiana, Morgan City Wholesale Company at Morgan City, and Renoudet & Deitlien Grocery Company, New Iberia, Louisiana.

Q. And they are all of the branches operated by the Interstate Wholesale Grocery Company?

A. That is correct.

Q. Are all of the purchases of these various branches made by the New Orleans office of the Interstate?

A. No, sir, they are made principally by the respective branch managers.

Q. I see. Well, are all bills paid by the New Or-
564 leans office?

A. That is right.

Q. And the invoices, files and records of all of the companies, would then be in the—

A. Would be kept here in the main office.

Q. Who is the president of your firm, sir?

A. Mr. Ernest Du Pont.

Q. And he is also the president of all of the other branches?

A. That is right.

Q. And who is the vice-president, sir?

A. Mr. George Swarbrick. He is the chairman of the board, too.

Q. Are they located in New Orleans?

A. He is, yes. Mr. Du Pont resides in Homer.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 69.

(The document referred to was marked "Commission's Exhibit 69" for identification.)

By Mr. Haslett:

Q. Mr. Toups, I hand you a document marked for identification as Commission's exhibit No. 69, and ask you to state what that is, if you know, sir?

A. This bill is dated March 4, 1940, against the Du Pont Wholesale Company at Homer, Louisiana, cov-
565 ering twenty cartons of 24 one pound and ten ounce Morton's free running salt at $1.60; extended, $32.00.

Q. And has the invoice a number upon it, sir?

A. Yes, the invoice number is 2083.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be marked by the reporter as Commission's exhibit No. 69 in evidence.

(The document referred to, heretofore marked "COMMISSION'S EXHIBIT 69" was received in evidence.)

By Mr. Haslett:

Q. Mr. Toups, I again hand you Commission's exhibit No. 69, and ask you to explain the item of $5.35, which has been deducted from the invoice price, sir.

A. That covers the freight which was paid by us to the S. B. Transport Company of Louisiana, which is a common carrier. These charges were paid on March 4, 1940, and represent the freight from New Orleans to Homer, Louisiana.

Q. And it is deducted from the invoice price?

A. That is right.

Q. And does Commission's exhibit 69 represent the type of invoice passing between the Morton Salt Company and the Du Pont Wholesale Grocery Company?

A. How is that?

566 Mr. Haslett: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Yes, it does.

Mr. McBride: If the Examiner please, may we object to that question, unless counsel identifies it with respect to LCL shipments of Morton's blue package?

Mr. Haslett: I will be glad to clear it up, Mr. Examiner.

Trial Examiner Purcell: Do so, please.

By Mr. Haslett:

Q. In order to satisfy Mr. McBride as to his objection, I will ask you this question: Whether Commission's exhibit No. 69, which I show you herewith, sir, represents the type of invoice that passed between the Morton Salt Company and the Du Pont Wholesale Grocery Company for less than carload lots of Morton's free running and Morton's iodized round package salt?

A. That is right, it does represent an LCL shipment, and is typical of the type of invoice being handled on such shipments.

Mr. Haslett: Now, Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 70.

(The document referred to was marked "Commission's Exhibit 70" for identification.)

567 By Mr. Haslett:

Q. Mr. Toups, I hand you what has been marked for identification as Commission's exhibit No. 70, and ask you to state what that is?

A. This invoice is dated December 31, 1941, and covers a shipment of salt to the Covington Grocery & Grain Company, Covington, Louisiana, made up of—do you wish me to read the various items on there?

Q. No, sir, just describe the document the date, the invoice number and what it is for.

A. All right, invoice No. 89131, car M.I.L.W. 20182, with a gross weight of 45,825 pounds.

Q. I believe you mentioned the date was December 31, 1941?

A. Yes, I did.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be marked by the reporter as Commission's Exhibit No. 70 in evidence.

(The document referred to, heretofore marked "COMMISSION'S EXHIBIT 70" was received in evidence.)

By Mr. Haslett:

Q. I again hand you Commission's exhibit No. 70, and direct your attention to the lower part of the exhibit, and ask you to state what the figure $146.90 represents?

568 A. That amount represents freight which we paid to the Gulf, Mobile & Northern Railroad on January 3, 1942, representing their cost of hauling this car to Covington.

Q. And was that freight deducted from the invoice price?

A. Yes, it is.

Q. And the balance was then paid to the Morton Salt Company upon that purchase?

A. That is correct.

Q. Is Commission's exhibit No. 70, Mr. Toups, typical of invoices passing between Morton Salt Company and the Covington Grocery & Grain Company of Covington, Louisiana, for the purchases of salt from the Morton Salt Company on a carload basis?

A. It is.

Q. And as the Covington Grocery & Grain Company is a branch of the Interstate Wholesale Grocery Company?

A. Yes, it is.

Q. The same is true as to the Du Pont Wholesale Grocery Company?

A. That is correct.

Q. Does Commission's exhibit No. 70 show a carload discount?

A. No, there is no carload discount shown, but the price on the free running salt is on the carload basis.

Q. That is, $1.50?

569 A. $1.50 instead of $1.60 on LCL shipments.

Q. Is there any carload discount shown on the

other types of salt as represented on Commission's exhibit No. 70?

Mr. McBride: If the Examiner please, I think I will object to that question, unless counsel first identifies whether or not the witness knows what he means by a carload discount. I feel that the question is a little premature.

Trial Examiner Purcell: I will sustain the objection on that basis.

By Mr. Haslett:

Q. I believe you testified your company does not receive any discount whatsoever from the Morton Salt Company?

A. That is correct.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 71.

(The document referred to was marked "Commission's Exhibit 71" for identification.)

By Mr. Haslett:

Q. Mr. Toups, I hand you what has been marked as Commission's exhibit No. 71 for identification, and ask you to state what that is, sir, if you know?

A. This covers an invoice from the Morton Salt Company dated November 6, 1941, against our branch, the Du Pont Wholesale Company at Homer, Louisiana, cov-
570 ering a shipment consisting of 450 one hundred pound sacks of coarse salt, shipped in car T&P 60923.

Q. Invoice No. 78384?

A. That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described by the witness will be marked by the reporter as Commission's exhibit No. 71 in evidence.

(The document referred to, heretofore marked "COMMISSION'S EXHIBIT 71" was received in evidence.)

By Mr. Haslett:

Q. Mr. Toups, I hand you Commission's exhibit No. 71 and ask you to state what the figure $141.06, as represented on Commission's exhibit No. 71 indicates?

A. It covers transportation charges paid on Novem-

ber 10, 1941, to the Texas & New Orleans Railroad Company.

Q. And that is deducted from the invoice price?

A. Yes, sir.

Mr. Haslett: I will ask the reporter to mark this document for identification as Commission's exhibit No. 72.

(The document referred to was marked "Commission's Exhibit 72" for identification.)

By Mr. Haslett:

Q. You have been handed by the reporter, Mr. Toups, a document which has been marked for identification as Commission's exhibit No. 72. Will you describe the document, please, sir?

571

A. It represents an invoice from the Morton Salt Company, dated October 18, 1940, No. 4577, against our branch, Covington Grocery & Grain Company, covering various items of salt shipped in car SLSF-163801.

Q. Has the freight been deducted from the invoice price?

A. Yes, it has.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence and marked by the reporter as Commission's exhibit No. 72.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 72" was received in evidence.)

By Mr. Haslett:

Q. Mr. Toups, if a competitor of your company were selling Morton's free running and iodized salt at a cent in price less than the price that you were charging for the same type of salt, of the same grade, quality and size, would that in any way affect your business?

A. It would, to some extent.

Q. And if he was selling it at $1.50 a case, which would be the price that you were paying for it, would that in any way affect your business?

572

A. Yes, very materially.

Q. Is the stock of the Interstate Wholesale Grocery Company owned by a group of wholesalers?

A. No, it is not.

Q. And the Interstate Wholesale Grocery Company

owns and controls the various branches that you have named?

A. That is correct.

Mr. Haslett: I think that is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Toups, did I understand you correctly in saying that you had no warehouse here in New Orleans?

A. That is right.

Q. Only the executive offices?

A. That is correct.

Q. So that your company endeavors to obtain no business in the city of New Orleans, as such, is that correct?

A. We do not.

Q. Mr. Toups, I show you Commission's exhibit No. 70, and I think, if I recall correctly, that you testified with respect to that exhibit that no carload discount or no discount of any kind was shown on the face of the invoice?

573 A. That is right.

Q. Do you know of your own knowledge, Mr. Toups, what the less than carload price of the various items of salt shown on Commission's exhibit No. 70, excepting Morton's blue can, was as of the date of that invoice?

A. No, I wouldn't be positive about that.

Q. Would you know of your own knowledge what the carload price with respect to those items of salt was, as of the date of that invoice?

A. Do you mean on the iodized and free running salt?

Q. On everything except the iodized and free running salt.

A. No, I would not.

Q. So, from your own knowledge, you wouldn't know for certain whether the prices shown for all of the items other than Morton's free running and Morton's iodized on Commission's exhibit 70 is what we would call an LCL price or carload price?

A. Well, I wouldn't be positive, because those purchases were not made by myself.

Q. I see. So, in so far as the Morton's free running and Morton's iodized, appearing on Commission's exhibit 70, you identify that as the carload price, $1.50 per case?

A. That is correct.

Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: That is all, Mr. Toups, thank you very much.

574 (Witness excused.)

Mr. Haslett: Mr. Pelias, come around, please.

CONSTANCE H. PELIAS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. State your full name for the record, please.
A. Constance H. Pelias, P-e-l-i-a-s.
Q. And where do you reside, Mr. Pelias?
A. 2424 Peniston Street, New Orleans.
Q. In what business are you engaged?
A. Wholesale grocery business and tobacco.
Q. With what company are you connected?
A. Imperial Trading Company.
Q. And where is the Imperial Trading Company located?
A. 531 South Peters, New Orleans.
Q. And what position do you hold with that company?
A. I am the proprietor of the Imperial Trading Company.
Q. And you own the company outright?
A. Yes, sir.
Q. What is the business of the Imperial Trading Company?

A. Wholesale ware, selling merchandise, groceries
575 and tobaccos and cigarettes, with various outlets, such as retail groceries or hotels and institutions or anything that use this line of merchandise.

Q. You sell groceries and allied products to the retail grocery stores?
A. Retail outlets, yes.
Q. And do you also sell salt?
A. Yes, sir.
Q. Have you any competitors?
A. Yes, sir, quite a good many.
Q. Would you name some of your competitors, please?
A. Well, there is Goodman & Beer, Gerde, Newman,

Albert Mackie, G. Dounson; there are quite a few of them, Spot Cash, Witherspoon Brothers, Seago.

Q. Up until several months ago, was the C. D. Kenny Company a competitor of yours?

A. Yes, sir.

Q. And do you know of your own knowledge, how long they have been out of business here in New Orleans?

A. I think for the last year, or about two years, or a year and a half, I believe.

Q. About a year and a half?

A. About, yes, sir.

Q. That would make it about the first part of 1941?

A. That is right, yes.

576 Q. During the time that they did operate here, they were competitors of yours?

A. Yes, sir.

Q. They sold groceries, salt and allied products to the retailers in competition with you?

A. Yes, sir.

Q. Do you purchase salt from the Morton Salt Company?

A. I do.

Q. You are one of their customers?

A. Yes, sir.

Q. What type of salt do you purchase from the Morton Salt Company?

A. Well, we buy everything that they manufacture in our line, such as Morton's salt, or Kleer salt, or sack salt, 100 pounds; various kinds of products.

Q. Do you purchase the Morton free running salt?

A. Yes.

Q. That is in the round package?

A. Blue label, yes.

Q. And Morton's iodized salt?

A. Yes, sir.

Q. That is also in the round package blue label, isn't it?

A. Yes, sir.

Q. Do you know what price you pay Morton Salt Company for their particular product per case?

577 A. $1.50 per case.

Q. Is that true both of the free running and the iodized salt?

A. Yes, sir.

Q. Do you purchase any salt from the Morton Salt Company on a carload basis?

A. Yes, but we buy a carload of salt at the same price.

Q. What do you resell Morton's salt, round package blue label free running salt to the retailers for, sir?

A. Around $1.65 a case.

Q. $1.65 a case?

A. Yes.

Q. And is that true as to the iodized salt, also?

A. Yes, sir.

Q. Have you had occasion to purchase salt from the Morton Salt Company in a less than carload shipment?

A. I have.

Q. And will you explain how such purchases are made by your company?

A. I would say this: We can use a carload of salt any time, but not getting anything different in the carload and small lots of merchandise, we would prefer to buy it in small lots. In other words, we need 10 or 20 cases or 50 cases, we will go to the warehouse and pick it up. Now, there is nothing to our advantage to buy a carload, 578 because we don't get no different price, we pay the same price for carload as we do for LCL, $1.50 a case, and the same thing applies with the other salt, sack salt or otherwise. As a matter of fact, I have spent a great effort, I have heard a lot of rumors that the Morton Salt Company had been selling salt cheaper than offered to me, and I talked to the salesman, Mr. Williams, that calls on me, and Mr. Bringhurst, the agent down here. He was down in my office, and I said, "Why don't you do that, we can buy a carload of salt any time?" The salesman gives nobody anything, and he emphasized one fact with me, he said, "You have to buy about 50,000 cases or $50,000 worth of merchandise a year to get something off," and I couldn't get anything, and I still can't get anything, I am still trying.

Q. When you say the warehouse, you mean Morton Salt Company's warehouse?

A. Yes, they keep a warehouse here, and we draw orders as we need them, whether five cases or fifty cases.

Q. Do your trucks call at the Morton Salt Company's warehouse?

A. Yes.

Q. Does your trucks pick the requirements up?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 73.

579 (The document referred to was marked "Commission's exhibit 73" for identification.)

By Mr. Haslett:

Q. Mr. Witness, the reporter has handed you a document marked for identification as Commission's exhibit No. 73, and I will ask you to describe it, if you please, sir?

A. Invoice No. 4989, September 8, 1941.

Q. Is it an invoice from the Morton Salt Company?

A. It is an invoice from the Morton Salt Company, New Orleans, Louisiana, shipped to Imperial Trading Company, city, 20 cases of 24 one pound and ten ounce Morton's free running salt, $1.50.

Q. You needn't read that, sir. I just wanted a description of the document.

A. Yes, sir.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be marked by the reporter its Commission's exhibit No. 73 in evidence.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 73" was received in evidence.)

By Mr. Haslett:

Q. Mr. Witness, I again hand you Commission's
580 exhibit No. 73, and ask you to state whether the document is typical of invoices passing between Morton Salt Company in New Orleans and the Imperial Trading Company, Inc., of New Orleans, for products sold by the Morton Salt Company to the Imperial Trading Company on Morton's free running and Morton's iodized salt, on carload basis?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I would like you to mark the document I am handing you herewith for identification as Commission's exhibit No. 74-A and B.

(The document referred to was marked "Commission's Exhibit 74-A and 74-B" for identification.)

By Mr. Haslett:

Q. Mr. Pelias, I hand you what is marked for identification as Commission's exhibit 74-A and B, and ask you to describe Commission's exhibit 74-A first?

A. Morton Salt Company, New Orleans, shipped to Imperial Trading Company, destination New Orleans, invoice No. 5016, dated September 9, 1941, state of Louisiana, car initialed T&P, car No. 50155.

Q. I will ask you to turn over and describe Commission's exhibit No. 74-B.

A. New Orleans, Louisiana, freight bill, T&P Railroad Company, to the consignee, Imperial Trading Company, New Orleans. Car initials, T&P-50155, shipped from
581 Morton Salt Company, Kleer Mine, Grand Saline, Texas, 9-9-41, No. 4602.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be marked by the reporter as Commission's exhibit No. 74-A and B in evidence.

(The documents referred to, heretofore marked "COMMISSION'S EXHIBIT 74-A and 74-B" for identification were received in evidence.)

By Mr. Haslett:

Q. Do you get any discounts or allowances of any kind from Morton's Salt Company?

A. No, sir.

Q. Would the fact that a competitor of yours is paying $1.40 a case for Morton's free running salt, while at the same time you were paying $1.50 a case, would that in any way affect your business?

A. Yes, sir.

Q. And if a competitor were selling the same type of salt, that is, the free running salt, at a cent less than the price at which you were charging, would that in any way affect your business?

A. Yes, sir.

Q. Is the Imperial Trading Company a corporation?

A. No, sir.

582 Q. It is a firm wholly owned by yourself?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. I only have one or two questions, Mr. Pelias.

A. Yes, sir.

Q. You just stated, I believe, in answer to counsel's question, that if one firm paid $1.40 for a case of salt, and you were paying $1.50 for the same type of salt, that that would have some effect on your business?

A. Yes, sir.

Q. I will ask you to consider, Mr. Pelias, whether or not your business would be affected if the firm paying $1.40 per case for sale, was selling that salt for $1.65 while you were paying $1.50 for the same salt, but also selling for $1.65, would there be any affect on your business then?

A. Well, I would say this, if we all have the same price, it is going to affect it.

Q. Excuse me, but just answer the question.

A. Now, will you let me have that question over, please, sir?

Q. Let me get at it this way, Mr. Pelias: If one of your competitors were selling a case of Morton's free running sale for $1.65 a case and at the same time you 583 were selling a case of that salt for $1.65 a case, there would be no effect on your business one way or another, would there?

A. No, sir.

Q. You would be competing at the same price?

A. Yes, sir.

Q. Then, it wouldn't make any difference, so far as your business is concerned, whether that competitor who was also selling for $1.65, paid $1.40 or $1.45 or $1.48 a case, would it?

A. But it would make a difference, because he can undersell me.

Mr. McBride: I ask the Examiner to strike that answer.

Trial Examiner Purcell: As not being responsive?

Mr. McBride: That is right.

Trial Examiner Purcell: Let it be stricken.

By Mr. McBride:

Q. I am not trying to get at what he might do. What I am trying to get at is this, Mr. Pelias, that it is the

price at which your competitor sells the salt that determines the effect it will have on your business, and not the price which he pays for the salt?

Mr. Haslett: I object to that.

Trial Examiner Purcell: That is the way the question was put originally.

584 Mr. Haslett: I didn't understand it like that. There are a lot of factors up there that enter into the effect upon this man's business. The fact that one customer of Morton's salt is paying $1.40 for it, and another $1.50 for it, might have a decided effect upon his business, although both might be sold at the same price, and I certainly object to that question as calling for a conclusion of the witness.

Mr. McBride: If the Examiner please, I have listened to a number of questions as to whether a cent differential or a five-cent differential would make an effect on somebody's business without specifying as to where it is or who it is or how it is. Now, counsel has branched off of that subject and asked this witness in terms of purchasing prices, which is something wholly different than terms of selling prices, and I think I am entitled to clear up that it is a competitive selling price of these competing wholesalers, using Mr. Haslett's words in the sense of competing and competitors, and the purchase price may have nothing to do with the competitive situation of this gentleman, or any other wholesaler.

Trial Examiner Purcell: I won't permit you to go any further on the record. Do you want to go off the record?

Mr. McBride: I will take the ruling on it now.

Trial Examiner Purcell: All right, I will overrule
585 the objection.

The Witness: Do you want me to answer?

By Mr. McBride:

Q. I want you to answer whether that is correct or not.

A. It would affect my business.

Trial Examiner Purcell: It would?

The Witness: Yes.

By Mr. McBride:

Q. Now, let me get this clear, Mr. Pelias, if you are selling a case of salt for $1.65, and simultaneously a competitor of yours is also selling that same case of salt for

$1.65, can you tell me in what respect your business would be affected if that competitor paid a different price for that case of salt than you were paying for it?

A. Well, do you want me to make just a little explanation of that? If it pleases you, I will be glad to give you my own knowledge. I don't want the answer to be yes or no, I want to explain it to you.

Trial Examiner Purcell: Counsel has asked you for the reasons.

By Mr. McBride:

Q. If you will keep in mind the part of my question where the selling price is involved.

A. I believe where one merchant owns merchandise cheaper than the other merchant, he has the advantage of his competitor, and that is my answer, and I could
586 go on and explain to you in detail what I mean.

Q. Well, I will accept that answer.

I think that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Pelias, Mr. McBride stated that if a competitor of yours were paying $1.40 a case for Morton's free running salt and was selling it at $1.65 a case, and you were paying $1.50 a case and were selling it for $1.65 a case, he was trying to determine whether that would affect your business. The difference between $1.40 and $1.65 is 25 cents, is it not, sir?

A. Yes, sir.

Q. And the difference between $1.50 and $1.65 is 15 cents?

A. That is correct.

Q. And the fact that the competitor is making a greater profit on the sale of his commodity would have a very determining effect upon your business, wouldn't it, sir?

A. Yes, very much.

Mr. McBride: I object to that question in terms of profit.

Trial Examiner Purcell: He couldn't mean losses.

Mr. McBride: He has no knowledge as to what the profit is, Mr. Examiner.

587 Trial Examiner Purcell: He was figuring it on a relative profit basis.

Mr. McBride: I don't know what the relative profits are.

Trial Examiner Purcell: Well, it would be the ratio of two to five, assuming all other factors to be equal.

Mr. McBride: But that is a very broad assumption in this case, if your Honor please.

Mr. Haslett: In order to satisfy Mr. McBride, I will use the word "differential," if you like.

Mr. McBride: I don't want to get it in terms of profit.

Mr. Haslett: Of course, a lot of things might enter into the profits of particular items, such as overhead costs, and distribution.

Trial Examiner Purcell: I assumed that you were trying to bring out the differential or, say, relative profits. Mr. McBride, are you agreeable to accepting the amendments?

Mr. McBride: Differential, that will be satisfactory.

By Mr. Haslett:

Q. So, the differential, then, in order that the record may be clear, would be 15-cents in the case where you
588 would purchase at $1.50 and sell for $1.65, and the differential would be 25-cents where a competitor was purchasing at $1.40 and selling at $1.65?

A. Yes, sir.

Q. And that would have a determining effect upon your business?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. Pelias.

Mr. McBride: That is all.

(Witness excused.)

Mr. Haslett: Come around, Mr. Witherspoon.

JAMES WITHERSPOON was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, please, sir?

A. James W. Witherspoon.

Q. And where do you reside, Mr. Witherspoon?

A. 202 West Oak Ridge Park, Metre, Louisiana.

Q. Is that suburb of New Orleans?

A. Yes, sir.

Q. In what business are you engaged?

589 A. Wholesale grocery business.

Q. With what firm are you connected?

A. With Witherspoon Brothers.

Q. And is that a corporation?

A. A partnership.

Q. And are you a part owner in that?

A. I am a part owner, right.

Q. Are you a half owner?

A. Yes.

Q. What is the business of the Witherspoon Brothers?

A. Wholesale grocery and tobacco business.

Q. And where are they located?

A. 600 South Claybourne Street.

Q. Is that in New Orleans?

A. That is in New Orleans.

Q. And do they sell groceries and allied products to the retailers?

A. That is correct.

Q. And do they have any competitors?

A. Yes, quite a number of them.

Q. Would you name some of them for the record, please?

A. Spot Cash Wholesale Grocery Company.

Q. Is that in New Orleans?

A. That is in New Orleans, and Menard Company, that is in New Orleans, Imperial Trading Company, New Orleans, Dounson & Company, New Orleans.

590 Q. Crescent City Wholesale?

A. Crescent City Wholesale.

Q. They are in New Orleans, too, aren't they?

A. In New Orleans, and Supreme Wholesale Company, New Orleans. Do you want any more, or is that enough?

Q. I think that is plenty, sir. Does your company do any retail business?

A. No, none at all.

Q. Has it any retail stores associated with it, sir?

A. No.

Q. Does your company sell salt?

A. That is right.

Q. Is it a customer of the Morton Salt Company?

A. It is.

Q. And what type of salt does your company purchase from the Morton Salt Company?

A. Table salt in the 25 ounce packages, blue packaged Morton's iodized and free running salt, and also the flat packages under the name of Kleer salt.

Q. Do you know the price which your company pays to Morton Salt Company for the free running and iodized blue package salt?

A. $1.50 a case.

Q. And does your company purchase on a carload basis?

591 A. No.

Q. How does it obtain its supply of salt?

A. We draw an order on the Morton Salt Company's warehouse here in New Orleans, and our trucks go over to pick the salt up and bring it back to our warehouse.

Q. Does your company receive any discounts, allowances of any type from the Morton Salt Company?

A. No, sir.

Q. Was the C. D. Kenny Company a competitor of your company?

A. That is correct, before they went out of business.

Q. And do you know approximately what time they went out of business?

A. I would say, maybe, two years or a year and a half ago, sometime within that period.

Q. Around the first part of 1941?

A. Somewhere around in there, I don't know the exact date.

Q. And is Goodman-Beer one of your competitors?

A. That is correct.

Q. And they are located here in New Orleans?

A. That is correct.

Q. What price do you sell to your customers, that is, the retail grocery stores, the Morton's iodized and Morton's free running round package table salt?

A. $1.65 a case.

592 Q. You pay $1.50 and sell it for $1.65?

A. Correct.

Q. Would your business in any way be affected by the fact a competitor of yours was purchasing Morton's iodized salt in the round package and Morton's free running salt in the round package blue label at $1.40 a case, and re-selling it at the same price at which you were selling it?

A. I think it would, yes.

Trial Examiner Purcell: Read the question back, please.

(The question referred to was read by the reporter.)

Mr. McBride: Mr. Examiner, I was prepared to make an objection had the witness not answered quite so rapidly.

Trial Examiner Purcell: Are you making your objection now?

Mr. McBride: If I may. I realize I am immature, but I didn't have an opportunity to interject.

Trial Examiner Purcell: That is all right.

Mr. McBride: I should like to object to the question on the ground we cannot have on this record the opinion evidence of this witness as to what the effect of the various purchase prices as illustrated or suggested by counsel might have on this witness' business. I think the witness might be competent to testify as to the possible effect
593 on his business of the sale price of a competitor, but I would object to his opinion testimony as to what the effect might be in terms of purchase price.

Mr. Haslett: Mr. Examiner, are we on the record or off?

Trial Examiner Purcell: We are on the record, but I hope you will make this concise.

Mr. Haslett: It is hard for me to believe that counsel is serious in his objection, that is, that if the Commission is bound to show through some other means other than the customers of the respondent that are not so favored by receiving the low price, the effect upon competition, how in the world can the Commission put in its case? This is extremely relevant and material to the issues of the case to show that customers who are purchasing salt from the Morton Salt Company are not getting the additional discount are in competition with other customers who are getting it and whose business is thereby affected by the fact that the differential between the price paid by one is greater than that of the price paid by other customers.

Mr. McBride: If the Examiner please, at the risk of ruining this record with argument of counsel, this is an exceedingly important point to me.

Trial Examiner Purcell: That is why I am permitting you gentlemen to put this on the record. I have had
594 occasion off the record several times to call your attention to rule 17, with which you are both familiar. It is your duty to hold the record down, and it is my duty, also, but the point seems to me to be important, and I

think you both should have an opportunity to place your position before the Commission on this question.

Mr. McBride: Then, if I may reply to Mr. Haslett's suggestion there, Mr. Haslett has shown that in certain instances discounts were allowed to certain customers. He has shown in other instances that they were not allowed to other customers who are doing business in the same city, take for example, New Orleans, and no objection has been lodged with respect to that line of evidence.

He has even taken the step of asking the opinion of the various witnesses for the Commission as to whether or not a differential, suggesting one-cent, five cents, or other figures, in the selling price of these various wholesalers would have an effect on that particular witness' business, and by and large no objection has been lodged to that, although it was opinion testimony by the witness on the stand at that time.

But now, Mr. Haslett has taken a step further and delved into the realm of the purchase price without relationship to what the retail price might or might not be, and there I am afraid I must draw my objection, and draw the line, for the simple reason that I believe Mr. Haslett must demonstrate, not from the opinion of this one witness, or two witnesses, that competition has been injured, but demonstrate by the facts whether it has been injured, and I shall have to object strenuously to that line of questioning by the Commission's counsel.

595

Trial Examiner Purcell: I think, gentlemen, that the objection of Mr. McBride is not well taken, for the reason that there may be many factors entering into the question, the purchase price as well as the sale price. It would be rather unfortunate for the Commission if the Commission would have to prove its case out of the mouths of the favored customers. Of course, that would be a very difficult thing to do, so therefore, it is relegated to the position where it will have to sustain its case by proving it out of the mouths of the unfavored customers.

It is my thought that the purchase of a case of salt at $1.40 by A, and the purchase of a case at $1.50 by B, would give to A a decided advantage in competition, even though both A and B resold at $1.65.

Mr. McBride: May I interject one more thought, so long as we have taken this much time on the record?

Trial Examiner Purcell: Yes, sir.

Mr. McBride: I am not, by this objection, seeking to force Mr. Haslett to prove his case, if he can, as you
596 described them, by favored customers. I can't object if he tries to prove it by, as you call them, the unfavored customers, but he can do it, if he can, by showing whether or not the unfavored customer's business has been hurt, and now I am in the position, if the Commission upholds the Examiner's ruling in this case, of where they can take scott leave of the respondent here, and on the cumulative opinion, without further demonstration of facts, bind the respondent with the proposition that competition has been injured, and I suppose in violation of some statute, the Robinson-Patman Act, and I don't believe that can be the law in this case. Surely, we can't be bound by that sort of cumulative opinion evidence, and if the Examiner is prepared and is ruling against me on this issue, I will only have to repeat it every time it is raised, and I feel quite intense on this particular objection, because it is vitally important to the case.

Trial Examiner Purcell: I realize, perhaps, that you feel intense, but it would seem to me further, in answering you, sir, that one of the further reasons given by you is purely anticipatory, because you are proceeding upon the theory that the Commission will not by further testimony or testimony aliundi prove its case.

Mr. Haslett: The Examiner has ruled?

Trial Examiner Purcell: I have ruled.

597 Mr. Haslett: I know the Examiner means when he says "favored customers," that they are customers that have qualified in accordance with Morton's particular quantity schedule.

Trial Examiner Purcell: I think we are all of one accord on that.

Mr. Haslett: We have no ulterior motive in saying "favored" in this case.

Mr. McBride: My argument to the Examiner was with that understanding.

Trial Examiner Purcell: The Examiner so understands.

Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's Exhibit No. 75?

(The document referred to was marked "Commission's Exhibit 75" for identification.)

By Mr. Haslett:

Q. Mr. Witness, you have been handed a document which has been marked for identification as Commission's exhibit No. 75, and I will ask you to describe it, if you will, please, sir.

A. This is an invoice numbered 4040 from the Morton Salt Company, New Orleans, Louisiana, to Witherspoon Brothers, New Orleans, Louisiana, for 25 cases of Morton's free running salt and 25 cases of Morton's iodized salt, dated March 6, 1941.

598. Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument will be admitted in evidence and marked by the reporter as Commission's Exhibit No. 75.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 75" was received in evidence.)

Mr. Haslett: And I hand the reporter three documents and ask that they be marked for identification as Commission's exhibit No. 76-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 76-A, 76-B, and 76-C" for identification.)

By Mr. Haslett:

Q. Mr. Witherspoon, you have been handed a document which has been marked for identification as Commission's Exhibit No. 76-A, B, and C, and I will ask you to describe Commission's Exhibit No. 76-A for identification.

A. No. 76-A is an invoice numbered 3415 from Morton Salt Company, New Orleans, to Witherspoon Brothers, New Orleans, dated November 18, 1940.

Q. And would you describe the document known as Commission's exhibit for identification 76-B?

A. 76-B is a drayage ticket from the Morton Salt Company New Orleans, to Witherspoon Brothers, num-
599 bered 3880, customer's order No. 2158-B.

Q. What is the date of it, sir?

A. The date is November 18, 1940.

Q. Will you describe the next document, please, sir, Commission's exhibit 76-C for identification?

A. The document marked 76-C is dated—just 18-40, a dray ticket dated 18-40 from the Morton Salt Company

to Witherspoon Brothers, No. 3878, customer's order No. 8100-B.

Mr. Haslett: I offer them, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be admitted in evidence and marked by the reporter Commission's exhibit 76-A, B, and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 76-A, 76-B, and 76-C" were received in evidence.)

Mr. Haslett: May we go off the record just a moment, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: That is all, you witness, Mr. McBride.

Mr. McBride: I have only one or two questions, Mr. Witherspoon.

600 *Cross-Examination by Mr. McBride.*

Q. You have been connected with this company for the past six or seven years, is that correct?

A. Not with the Witherspoon Brothers. I was connected with Davis-Meyers until May of 1940, when my brother and myself bought out this branch from Davis-Meyers, and established the firm which is Witherspoon Brothers.

Q. But you have been in the wholesale grocery business in the business here during the period indicated?

A. That is right.

Q. Do you know whether or not, Mr. Witherspoon, during that period a number of salt companies other than the Morton Salt Company were offering their products for sale to wholesale groceries, such as yourself, in New Orleans?

A. Do I know if they were offering their products?

Q. Yes.

A. Yes, sir.

Q. So that there were a number of sources available for the purchase of salt such as your company has used at all times during the six or seven year period in question, is that correct?

A. That is correct.

Q. And those companies offered a number of different grades and kinds of salt, as well as those offered by
601 the Morton Salt Company, is that correct?

A. That is correct.

Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: No further redirect.

Trial Examiner Purcell: The witness may be excused.

(Witness excused.)

Mr. McBride: May I request at this time, Mr. Examiner, permission to withdraw Commission's exhibits numbered 68 through 76-C, inclusive, with permission to return the originals after being photostated?

Trial Examiner Purcell: Granted. Is there any objection, Mr. Haslett?

Mr. Haslett: I have no objection, sir.

Mr. McBride: May we have just a moment before we close the record here?

Trial Examiner Purcell: Yes.

(A discussion was had off the record.)

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U. S. Court Room,
Federal Building,
Tallahassee, Florida,
Monday, April 27, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before: J. A. Purcell, Trial Examiner.

Appearances:

John H[illegible]ett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

604 Mr. McBride: Mr. Examiner, before counsel for the Commission calls his first witness, I should like to request that the Examiner instruct the reporter to note on the record that I am reserving this time my right to appeal to the Commission with respect to the Examiner's
605 rulings on two occasions on which I allowed objections. The first occasion being in connection with the

testimony of Mr. Kohlmeyer at New Orleans. The objection at that juncture being directed at the use of the words "competition, competitors," and "seeking the same market," as I recall, in the framing of counsel for the Comsion's questions.

You overruled the objection at that time and noted for the record a continuing objection with respect thereto.

The second objection was in connection with the testimony of Mr. Witherspoon, likewise at New Orleans, at which time I allowed an objection to question of counsel for the Commission as to the effect on the witness' business of the differential of the purchasing price between $1.40 and $1.50. I describe that merely to identify the objection to which I refer.

Would you agree at this time as a matter of noting for the record, that I have reserved my right in time for an appeal to the Commission, with the understanding that the right will not be exercised unless and until the Commission closes its case?

Trial Examiner Purcell: Very well, Mr. McBride.

Mr. McBride: If Mr. Haslett would acknowledge for the Commission that the making of my reservation is timely, I believe I will be satisfied that my rights have been reserved.

606 Mr. Haslett: I will so acknowledge.

Trial Examiner Purcell: It is all right with the Examiner.

Mr. Haslett: I will call as the first witness for the Commission Mr. Cameron of the Morton Salt Company. Come around and take the stand, sir.

ASHBY CAMERON was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name, Mr. Cameron?
A. Ashby Cameron.
Q. And you are here without a subpoena?
A. That is right.
Q. At the courtesy of the respondent?
A. That is right.

Q. And where do you reside, sir?
A. Nashville, Tennessee.
Q. And what business are you engaged in?
A. Sales, Morton Salt Company.
Q. You are engaged in the business of selling salt?
A. That is right.
Q. And you are connected with the Morton Sale Company?
607 A. Yes, sir.
Q. And what position do you hold with the Morton Salt Company?
A. Manager of the Nashville branch.
Q. Is that a sales office of the Morton Salt Company?
A. That is right.
Q. Do they also have a warehouse in Nashville?
A. They do not.
Q. Where is your closest warehouse located, sir?
A. We don't have any warehouses.
Q. Well, is there one located within an area where you order products to be shipped out of to your various customers?
A. Say that again, please.
Mr. Haslett: Read the question, Mr. Reporter.
(The question referred to was read by the reporter.)
The Witness: We do not have any warehouses. We ship direct from the plant to the customer.

By Mr. Haslett:

Q. You mean, in your particular area?
A. That is right.
Q. How many salesmen are employed by the Morton Salt Company in the Nashville office?
A. Eighteen.
608 Q. Are they under your supervision?
A. Yes, sir.
Q. What are their duties?
A. To promote the sale of Morton salt.
Q. Do they make sales, also, sir?
A. Do they make sales?
Q. Yes.
A. Yes, they make sales.
Q. They take orders for Morton salt to be shipped to the various customers, is that correct?
A. That is right.

Q. How long have you been with the Morton Salt Company, sir?

A. Eighteen years.

Q. How long have you been manager of the Nashville branch?

A. Eleven years.

Q. And can you tell us geographically what territory you have under your supervision?

A. Tennessee, Georgia, Florida,—all of Florida east of River Junction—Alabama, Birmingham north to the Tennessee line.

Q. You don't have North and South Carolina?

A. No, sir.

Q. You have all of Georgia?

A. Yes.

609 Q. How do you determine the price at which salt is to be sold to your various customers?

A. From a published scale, which is issued by the Chicago office.

Q. I hand you Commission's exhibit 5-A to F, inclusive, and ask you to state whether or not that is the particular scale that you use in determining the price at which Morton salt is sold by your company to its various customers in your area?

A. Yes, this is the scale that we use at the prices shown for the items shown therein.

Q. Will you state the procedure followed by your office in the placing of its orders for commodities to be shipped by the Morton Salt Company to your various customers sold at the Nashville office?

A. How are they handled?

Q. That is right.

A. We make acknowledgments in the Nashville office and mail them direct to the Chicago office. They are, in turn, handled with the plant.

Q. So, am I correct when I state that when an order has been obtained by one of your salesmen, it is transmitted to the Chicago office?

A. It is transmitted to the Nashville office, and we, in turn, forward it to the Chicago office for shipping in-
610 structions.

Q. And as a result of which, commodities are shipped from one of the plants of the Morton Salt Company direct to the customer?

A. Correct.

Q. And how is the billing handled? Is it billed out of the Nashville office or out of the Chicago office?

A. All billing is handled by the Chicago office.

Q. You sell all grades of salt from your office?

A. Yes, sir.

Q. Bulk salt and package salt, also, sir?

A. Yes.

Q. Do you handle through your office the round package Morton's free running salt?

A. Yes, sir.

Q. That is, in the blue label?

A. That is right.

Q. And what is the carload price per package for that particular type salt?

A. Carload price, $1.50.

Q. And less than carload price?

A. $1.60 per case.

Q. How would you have a less than carload price from the Nashville office?

A. Say that again?

611 Mr. Haslett: Read the last question.

(The question referred to was read by the reporter.)

The Witness: I don't get what you are trying to arrive at.

By Mr. Haslett:

Q. Well, sir, you testified that you don't have a warehouse where commodities are stored.

A. No, sir.

Q. That all commodities are shipped pursuant to orders placed with the Chicago office?

A. That is right.

Q. Have you any customers from the Nashbille office that are charged $1.60 a case for Morton's free running salt?

A. Yes, if they should buy in a pool car and it is reshipped from the car destination, they have to pay $1.60 from that destination.

Trial Examiner Purcell: Let me have that answer again.

(The answer referred to was read by the reporter.)

By Mr. Haslett:

Q. Where a car is shipped to a particular destination and then redistributed from that car, the $1.60 price will apply?

A. Correct.

Q. Do you know the annual dollar volume of business done by the Nashville office of the Morton Salt Company?

612 A. I don't recall it.

Q. Have you any of those figures with you here, sir?

A. No, sir, I do not.

Q. Would you say a greater proportion of your business is done in free running salt or the sack salt?

A. Sack salt.

Q. Could you estimate for us approximately the amount of free running salt sold on a percentage basis as compared with the amount of sack salt sold through any year period?

Mr. Mc Bride: If the Examiner please, I don't believe that question is relevant to this case, and I object to the question, unless counsel establishes the materiality of the ratios concerning which he is questioning this witness.

Mr. Haslett: Mr. Examiner, I think it is relevant as to the background and the size of this particular office of the Morton Salt Company. However, if those figures are not available, and this witness doesn't know, I want to pass it over, but I am not passing over or receding from my position that it is relevant and material to the issues of the case, but that the information is not available to the witness.

Trial Examiner Purcell: If he knows, let him answer "yes" or "no," and then I will rule on the question.

The Witness: I don't know.

613 By Mr. Haslett:

Q. Are your salesmen paid on a salary basis?

A. Yes, sir.

Q. No commission?

A. None.

Q. Do you have any promotional advertising campaigns?

A. No.

Q. From your office?

A. No, sir.

Q. Do you use any advertising medium whatsoever?

A. Yes, we advertise in the newspapers and on billboards, all of which is placed directly with the newspaper office and the advertising agency.

Q. From the Chicago office?.

A. We request it through the Chicago office, yes.

Q. Do you have any display advertising?

A. Our own salesmen make displays when they can, at convenient times.

Q. That is, counter displays and window displays?

A. Yes, they do both.

Q. Do they do any floor display work?

A. They put them in wherever they can, at a good spot.

Q. Do you pay any of your customers for that privilege?

A. We do not.

Q. Do you give them any compensation whatsoever?

614 A. None whatsoever.

Q. You have no trucks operating from your particular office?

A. No, sir.

Q. I presume you have competitors?

A. Yes.

Q. Could you name some of the competitors of Morton Salt Company in this particular area, or in the area served by the Nashville office?

A. There are quite a few. From the Louisiana field, there is International, Jefferson Island, Myles and Carey Salt Companies, and in the north we have Diamond Crystal, Worcester, Ohio, Hardy, Michigan Salt Company, and numerous others I don't recall.

Q. Do you encounter the competition of the Mulkey Salt Company?

A. Yes.

Q. Do you encounter that type of competition?

A. Yes.

Q. Do you encounter the competition of the International Salt Company in all areas where customers are solicited for orders from the Nashville office?

A. Yes, but that doesn't apply to Mulkey, however, if you ask that question.

Q. I said International.

615 A. Yes.

Q. Would you say International is your largest competitor?

A. I would think so.

Q. When we were talking about the advertising recently, display advertising in the windows and on the counters of the various retailers, that had particular reference to Morton's free running, round package salt?

A. Yes.

Q. Do you do any advertising of Kleer salt?

A. No.

Q. All of the advertising done is confined to the promotion of sale of Morton's free running and Morton's iodized round package blue label salt?

A. Practically.

Q. What is the purpose of the advertising program?

A. To promote sales.

Q. Of Morton salt?

A. Yes.

Q. Do you have any brokers that place orders with Morton Salt Company through its Nashville office?

A. Yes.

Q. And where are they located?

A. Do you want me to name the towns?

Q. Just the territory.

A. I would say the key towns in each state.

616 Q. One in Atlanta?

A. Yes.

Q. One in Jacksonville?

A. Yes.

Q. Montgomery, Alabama?

A. No, that is in the New Orleans territory.

Q. Which ones in Alabama would you cover there?

A. Birmingham.

Q. Do you have any in Nashville?

A. Yes.

Q. Do you have any duplications of selling service by the brokers?

A. I wouldn't call it duplication. The salesman might headquarter in the same town where the broker operates, and he might actually take the order, but where we have an arrangement with the broker, we generally pay him commission on it, rather than have the broker and salesman in competition with each other.

Q. Do any of the customers of the Morton Salt Company, sold through the Nashville office, receive a discount on a carload basis?

A. Our scale shows both carload and less than carload price.

Q. I was not asking you what the scale showed, but I am asking you whether they receive a carload discount on 617 purchases on a carload basis?

A. Yes, they receive the carload discount as shown by the scale, the net scale price.

Q. And have you any customers served by the Morton Salt Company through its Nashville office, receiving any additional discount on a quantity basis?

A. Yes.

Q. And are they numerous or few?

A. Well, I would say few.

Q. Is the Creasy Corporation served through the Nashville office of the Morton Salt Company?

A. No.

Q. The C. D. Kenny Company?

A. Yes.

Q. Some of their branches are served by the Nashville office?

A. Yes, sir.

Q. Could you tell me what branches are served through the Nashville office of the Morton Salt Company?

A. Well, let's see, they have Albany.

Q. Albany, Georgia?

A. Albany, Georgia, Macor, Georgia, Augusta, Georgia, and I believe Columbus, Georgia; Chattanooga, Tennessee and Knoxville, Tennessee. I think that is all.

Q. Do any of the single branches of the C. D. Kenny 618 Company in the territories which you have just named, the cities, purchase $50,000 worth of Morton's salt during a twelve consecutive months' period?

A. I wouldn't think so.

Q. Well, can you answer that definitely whether they do or not, sir?

A. I don't know.

Q. Is the Kroger Grocery Company sold by the Morton Salt Company through its Nashville office?

A. Yes, some branches.

Q. Do you know whether or not any particular branch of the Kroger Grocery Company purchased $50,000 worth of salt in a year from the Morton Salt Company?

A. I don't know.

Q. Have you ever heard of the Timberlake Grocery Company, of Thomasville, Georgia?

A. I have.

Q. Are they customers of the Morton Salt Company?

A. We sell them some, some little.

Q. Some little?

A. Mostly Morton's free running and iodized.

Q. Does Timberlake Grocery Company purchase $50,000 worth of salt a year from the Morton Salt Company?

A. Not in my territory.

Q. Well, they are only located in your territory, 619 aren't they, as far as you know?

A. As far as I know, they are.

Q. In addition to the several customers that I have named, you have a number of customers sold by the Morton Salt Company through its Nashville office that receive a 10-cent discount per case on Morton's free running salt?

Mr. McBride: Excuse me, Mr. Examiner, could I have that question read back?

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

Mr. Haslett: I will be glad to qualify it as to the time. Let me rephrase the question.

By Mr. Haslett:

Q. Have you any customers sold by the Morton Salt Company through the Nashville office that receive from the Morton Salt Company a 10-cent per case discount based upon a 5,000 case purchase during a twelve consecutive months' period?

A. Yes, sir.

Q. And have you any customers that receive a larger or greater discount, based upon the purchase of 50,000 cases of Morton's free running salt during a twelve consecutive months' period?

A. That is handled by the Chicago office. I don't know.

Q. Do you sell any products through the Nashville 620 office to the A&P Tea Company?

A. Yes, sir.

Q. Do you of your own knowledge know what allowance or discount they get from the Morton Salt Company?

A. I am not positive, I don't know.

Q. Does any allowance show on the books of the Morton Salt Company in the Nashville office for the purchases of the A&P Tea Company?

A. We don't keep books in the Nashville office.

Q. Do you keep the quantities sold to each customer in the Nashville office?

A. Yes.

Q. Of every particular type of salt?

A. We have copies of the orders, yes.

Q. Are they tabulated and kept in a capitulated form?

A. No.

Q. You testified, Mr. Witness, that on some occasions where a car has been shipped to a destination and then redistributed to various customers that the $1.60 price applies to a case of Morton's free running and Morton's iodized salt?

A. That is correct.

Q. Do you know whether or not the Morton Salt Company allows any cartage or allowance on the cartage basis to such customers hauling such salt?

621 A. Where they paid $1.60 a case?

Q. Yes.

A. We do allow freight if they submit the paid freight bill.

Q. Or the freight bill could be deducted from the invoice price?

A. Yes, sir, the freight bill has to be by common carrier, recognized by the Interstate Commerce Commission.

Q. So, where a car of salt has been broken up and sold to various customers from a designated point, the $1.60 price is charged for Morton's free running and iodized salt per case, the freight from the car to the point of destination of the particular customer is allowed by the Morton Salt Company, is that correct?

A. That is correct.

Q. Is any other type of allowance made by Morton Salt Company on a cartage basis?

A. No.

Q. No flat allowance of $1.00 or $2.00?

A. No, sir.

Q. Where several customers of the Morton Salt Company combine their purchases to buy in one car, would all of them receive the carload discount?

A. Yes.

Q. Based proportionately upon their purchases?

622 A. According to the scale, yes.

Q. Do all customers that purchase on the carload basis receive the carload discount?

A. Yes.

Q. Does the Morton Salt Company, through its Nashville office, sell any salt or salt products to Thomas & Howard Company?

A. Yes.

Trial Examiner Purcell: Mr. Witness, you must answer so the reporter can hear you, please, and not nod your head.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Thomas & Howard Company are a customer of Morton's, of Morton Salt Company's branch office at Nashville, Tennessee?

A. Yes, sir.

Q. And does Thomas & Howard Company receive a 10-cent discount on its free running salt from Morton Salt Company?

A. Yes.

Q. And that is done through the Nashville office?

A. We handle the orders only. We don't do any billing in the Nashville office, or receive payments.

Q. Could you tell me where Thomas & Howard Company is located, that receives such discounts?

623 A. I don't know all of their branches. Their headquarters, I think, is in the Carolinas somewhere.

Q. The Carolinas are not under your supervision?

A. No, sir.

Q. Is there any customer being served through the Nashville office of the Morton Salt Company who receives the 10-cents per case allowance on purchases from your company by various wholesalers who place their orders through such customer?

A. Would you have that read again, please?

Mr. Haslett: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I don't get the question.

By Mr. Haslett:

Q. All right, sir, let me reframe it for you, sir. Have you any particular customer who acts as your sales agent,

who solicits orders for the Morton Salt Company in a particular territory, transmits the orders to your office and receives on such order a 10-cent allowance per case on the Morton free running salt?

A. No.

Mr. McBride: If the Examiner please, I ask that the words "sales agent" be stricken from counsel's question, for reasons already indicated on previous objections of like nature.

Mr. Haslett: I will be glad to substitute the word
624 "representative."

Trial Examiner Purcell: Is that satisfactory?

Mr. McBride: Then, I will withdraw my objection.

Trial Examiner Purcell: Let the substitution be made.

By Mr. Haslett:

Q. Heretofore, Mr. Witness, we have been talking about missionary work in connection with the sale of Morton's free running and iodized salt.

A. Yes, sir.

Q. Is that term used in connection with sales made from your office?

A. I guess it could be termed as missionary work where a salesman works the retail trade and makes floor displays wherever he is given permission, takes his own material along and puts up a display which the buyer gives him the privilege of making in the right spot where he thinks he will sell more Morton salt.

Q. Do you do that type of work with customers who receive a 10-cent per case allowance?

A. No, sir.

Q. You do not, sir?

A. No, sir.

Q. Has that type of work been done in the Colonial Stores, that is the Big Star Stores?

625 A. No, sir.

Q. It has not been done?

A. If we were given permission, we would be glad to put them in, but they make their own floor displays.

Q. Have you ever offered to do it for them?

A. No.

Q. Is it done with the A&P Tea Company?

A. No.

Q. Would you say it is confined entirely to the retail-

ers served by the local jobbers who do not receive a 10 cent allowance per case?

A. Yes.

Trial Examiner Purcell: Mr. Witness, is the term "missionary work," as we have used it here, the same as "specialty work," as you use it in your business?

The Witness: I would think so, yes.

Trial Examiner Purcell: Is there a term current in your business "specialty work"?

The Witness: We call them retail salesmen. It is just a question of how you want to phrase it, what you want to call it.

Trial Examiner Purcell: Off the record here.

(A discussion was had off the record.)

Trial Examiner Purcell: Let's go back on the record, then. Mr. McBride?

626 Mr. McBride: Mr. Examiner, I would like to have the record show that in so far as Mr. Haslett, counsel for the Commission, has used the words "missionary work" in the hearings to date, that he was covering or endeavoring to cover the type of work referred to in respondent's answer as "specialty work," and I shall not endeavor to make any distinction between the two in so far as the record to date is concerned for any technical briefing purposes.

By Mr. Haslett:

Q. Now, Mr. Witness, I will ask you whether or not the Morton Salt Company, through its Nashville branch, does any specialty work in connection with the promotion of sale or resale of Morton's salt?

A. Yes, sir.

Q. And will you explain to us what type of specialty work is done, sir?

A. A specialty salesman is a man that calls on the retail trade. While there, he takes with him different forms of advertisement, and if the advertisement already in the store is dirty, he replaces it with what he has on hand. If he has a display in his store, and if it is not clean and neat, why, he fixes it up again. Sometimes he even makes displays with crepe paper, puts on new paper, if it is faded. He inspects the stock on hand to see that it is in good shape. If it is not in good shape, he replaces it.

627 Incidentally, if the stock is running low and he wants a few cases of salt sent out, he will take his order through his regular jobber with whomever he trades. He doesn't suggest who he should buy from, but to see that the order is delivered.

Q. I see. In that instance, he is acting as a salesman for the local jobber, for the particular jobber?

A. Well, he would take the order and deliver it to the jobber, and the jobber would deliver it.

Q. Now, could you tell us in some detail, or describe in some detail, the types of advertising used in connection with the specialty work done by the salesmen?

A. We use what we call window posters, advertising Morton's free running and iodized salt, penants hanging by a wire or nailed up against the wall. We have dummy cartons of the package itself, easels, and that is about all.

Q. And is the specialty work done in connection with the sale of Morton salt made available to customers who receive a 10-cent per case allowance on Morton's free running and iodized salt?

A. Would you have him repeat that?

Mr. McBride: If the Examiner please, I think I will object to that question.

Trial Examiner Purcell: Repeat the question, Mr. Reporter.

(The question referred to was read by the reporter.)

628 Trial Examiner Purcell: What is the ground of your objection, sir?

Mr. McBride: Because it describes it as specialty work with the retail trade. The customer is the wholesaler, our customer. The witness has just described, in a rough nature, specialty work.

Trial Examiner Purcell: I am at a disadvantage here, because I can't hear very well, and if the reporter would please turn around half way and face me, so I can hear the questions read, I would appreciate it.

I will overrule the objection.

Mr. McBride: Does the Examiner understand the nature of my objection?

Trial Examiner Purcell: Yes, that same question was asked of other witnesses, and I don't think any objection was made, and I thought it was all right at the time.

Mr. McBride: It wasn't asked in just that manner.

Trial Examiner Purcell: Well, let's get off the record for a second.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. Make your statement now, Mr. Haslett, please.

Mr. Haslett: In order to satisfy Mr. McBride, Mr. Examiner, I would be glad to insert before "customers" 629 the word "retailer" in my previous question, so that it would read, "to all of your retailer customers who receive the 10-cent per case allowance on Morton's free running and iodized salt, receive the specialty work—"

By Mr. Haslett:

Q. Or has the specialty work been made available to them?

A. Would you have him read the original question again?

Mr. Haslett: Read the original question and insert the word "retailer," Mr. Reporter.

(The question referred to was read by the reporter, with the insertion above-described.)

The Witness: I don't know of any case where there would be any occasion for specialty work at a retail store; a retailer such as Big Star or Colonial Stores wouldn't allow you to go in the store and solicit business.

By Mr. Haslett:

Q. That is not my question, Mr. Witness. I asked you whether or not it would be made available. Do they know about it? Have you offered it to them?

A. No.

Q. Now, the specialty work is not used in connection with the sale of salt from the Morton Salt Company to its wholesaler customers, is that correct, sir?

A. (No response.)

Q. I will reframe it, if you like, sir.

630 A. I wish you would.

Q. Does the Morton Salt Company have a specialty promotional campaign or activity in connection with its salt sold by the Morton Salt Company to its wholesaler customers?

A. To its wholesaler customers?

Q. Yes.

A. No, sir.

Q. No type of advertising is done through wholesalers at all, sir?

A. No.

Q. No type of promotional campaigns are effectuated through the wholesalers?

A. No.

Q. Does your office in Nashville, Tennessee, of the Morton Salt Company, act as sales agent for any of the other salt companies?

Mr. McBride: If the Examiner please, I believe I will object to the use of the words "sales agent." I think counsel is entitled to ask whether he offers to sell any other company's salt in that territory, but "sales agent" calls for a legal conclusion of this witness.

Mr. Haslett: I will accept the amendment.

Trial Examiner Purcell: You may answer, sir.

The Witness: Yes, sir.

By Mr. Haslett:

631 Q. Would you name such companies?

A. We handled a small amount for Ruggles-Rademaker Salt Company.

Q. And they are also a competitor of Motor Salt Company?

A. I don't know whether you would term them as competitors or not.

Q. Do they sell salt in competition with Morton Salt Company?

A. Yes.

Q. Where are they located, sir?

A. Manestee, Michigan.

Q. Does the advertising medium of which we have been talking about, the display advertising, show the resale price of the salt to the consumer?

A. The man has with him window posters, and they can be used on display, and has several prices attached, perforated, where you can tear off any price you want, two for fifteen, two for seventeen, or two for nineteen.

Q. Or ten-cents straight?

A. Or ten-cents straight.

Q. That is just one of the various forms of advertising?

A. That is right.

Q. Have you, as the manager of Morton's sales branch,

in Nashville, Tennessee, the authority to raise or lower the price of salt?

632 A. No, sir.

Q. Without the consent and approval of the Chicago office?

A. No, sir.

Q. Whenever that occurs, it must have the concurrence of the Chicago office?

A. That is correct.

Q. Is any salt sold through the Nashville office shipped from the warehouse in New Orleans?

A. No, sir.

Q. Will you classify for me, please, your buyers who use the salt for their own consumption? Do you have any such buyers, I will ask you that first?

A. Yes.

Q. And will you classify them for me, please? Are they canners?

A. Oh, gosh, I have got a hundred there, I guess, textile mills, canners, bakeries and flour mills.

Q. All of that type use salt?

A. Oh, yes.

Q. Then, you have what type of buyers that purchase salt for resale?

A. Wholesale groceries.

Q. And do you have voluntary chains?

A. Yes, sir.

Q. A group of wholesale grocers combining and

633 making their purchases on a combined basis?

A. Not a group of wholesalers, no. Now, you said voluntary chains. I thought you had reference to retail stores.

Q. You don't have any voluntary wholesale chains?

A. No, sir.

Q. Does the Red & White operate in your territory?

A. There is one, I believe one customer that belongs to the Red & White organization.

Q. Red & White is a voluntary wholesale organization, isn't it?

A. I don't know.

Q. And you have chain stores, also, like A&P Tea, and Safeway?

A. Correct.

Q. And Kroger?

A. Yes.

Q. Do you have any customers that purchase Morton's free running and iodized salt that consume the salt, that don't resell it?

A. They don't buy direct. Now, there is such a thing as a restaurant over here who will buy it through a wholesale grocer, and he will consume it, of course, or put it on his tables for consumption.

Q. You have no customers that buy direct from you that consume the salt?

634 A. Not of Morton's free running and iodized.

Mr. Haslett: Mr. Examiner, I want to excuse this witness at this time and recall him at the afternoon session, at which time I expect to conclude his direct examination, and will turn him over for cross-examination.

Trial Examiner Purcell: Is that agreeable?

Mr. McBride: Agreeable.

Trial Examiner Purcell: Very well.

(Witness excused.)

Mr. Haslett: May we have a few moments recess?

Trial Examiner Purcell: Recess for five minutes.

(A short recess was taken.)

Trial Examiner Purcell: You may proceed.

Mr. Haslett: Mr. Guy, come around and take the stand, please.

JOSEPH HARRELL GUY was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Guy, please, sir?

A. Joseph Harrell Guy.

Q. And where do you reside, sir?

635 A. Thomasville, Georgia.

Q. Thomasville, Georgia?

A. Yes, sir.

Q. And are you here in response to a subpoena duly served upon you by the Federal Trade Commission?

A. Yes, sir.

Q. And what business are you engaged in, sir?

A. The wholesale grocery business.
Q. And what company are you connected with, sir?
A. Timberlake Grocery Company.
Q. And where is the Timberlake Grocery Company located, sir?
A. Thomasville.
Q. Has it any branches, sir?
A. It has a branch at Macon.
Q. And what position do you hold with that company?
A. Secretary and treasurer and manager.
Q. Secretary-treasurer and manager of both branches?
A. Well, that title was when we only had one company, so I wouldn't be considered manager of the Macon branch, I don't think; in reality I am not.
Q. And is the Timberlake Grocery Company a corporation?
A. Yes, sir.
Q. And it is organized under the laws of what state, sir?
A. Georgia.
636 Q. And who are the officers of it, sir?
A. Mr. J. E. Timberlake, Sr., president; Mr. F. D. Flintom, vice-president; Mr. E. E. Boyce, vice-president; J. E. Timberlake, Jr., vice-president, and H. T. Timberlake, vice-president, and myself secretary and treasurer.
Q. Now, the question I am about to propound to you requires just a yes or no answer. If you don't understand the question, I will ask that you have it re-read, so that you can get the full significance of it.

Mr. McBride: If the Examiner please, I would like to have that stricken from the record. I don't believe it is proper for counsel to suggest the manner in which the witness answers. Let him answer as he sees fit to make his answer to the question to be propounded.

Trial Examiner Purcell: Let counsel's remark be stricken from the record.

Mr. Haslett: I would certainly like to be heard on it before the Examiner rules.

Trial Examiner Purcell: I shall be glad to hear you off the record, sir, but it seems to me that a caution to a witness of this sort is very improper. Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

By Mr. Haslett:

637 Q. Mr. Witness, is there any legal or corporate connection between the Timberlake Grocery Company of Thomasville, Georgia and the Thomas & Howard Company of Columbia, South Carolina?

A. I don't have the knowledge of law enough to say whether it would be legal or not.

Q. I believe you testified that it is a corporation?

A. The Timberlake Grocery Company is a corporation.

Q. And has it any corporate connection with the Thomas & Howard Company?

Mr. McBride: Now, if the Examiner please, that question has been propounded and already answered by the witness, and I object to the repetition of that question.

Mr. Haslett: The witness' answer was, "I have no knowledge that would give me the right to say whether there is any legal or corporate connection." I am asking him now whether there is any corporate connection between his company, the Timberlake Grocery Company, and Thomas & Howard Company.

Trial Examiner Purcell: In other words, you are leaving out the word "legal"?

Mr. Haslett: That is right, sir.

Mr. McBride: Let me have the last question read again, please.

(The question referred to was read by the reporter.)

638 Mr. McBride: I renew my objection, Mr. Examiner.

Trial Examiner Purcell: I overrule it. You may answer, sir.

The Witness: When you say "corporate connection," you mean, is it in any way incorporated together? Is that what you mean by that?

By Mr. Haslett:

Q. That is right, sir.

A. It is not.

Q. Is the Timberlake Grocery Company of Thomasville, Georgia, a branch of the Thomas & Howard Company?

A. Interpreting a branch, I would consider a branch as a part of the same corporation. That being the case, it would not be a branch.

Q. Now, does the Timberlake Grocery Company of Thomasville, Georgia, purchase salt from the Morton Salt Company?

A. Yes, sir.

Q. What type of salt is purchased by the Timberlake Grocery Company?

A. The majority of it is round package free running and iodized blue package salt, we will say.

Q. Before I get into the sale prices, I would like to ask you this question, Mr. Guy: Has the Timberlake Grocery Company any competitors?

A. Yes, sir.

639 Q. Would you name some of those competitors?

A. H. V. Kell, in Cairo, Moultrie Grocery Company at Moultrie, Georgia, Valdosta Flour Company in Valdosta, and I think it is Daffine Mercantile Company in Tallahassee, and Brandon Grocery Company in Thomasville.

Q. Roundtree Grocery Company in Thomasville?

A. No, Brandon.

Q. Is Roundtree Grocery Company a competitor, sir?

A. No, sir.

Q. South Georgia Wholesale Grocery Company, are they competitors?

A. No, sir.

Q. Now, I believe you stated you do purchase from Morton Salt, and you purchase the round package free running salt?

A. Yes.

Q. Do you know what price you pay for the round package free running salt per case?

A. The salt is invoiced to us at the regular list for that particular locality.

Q. Do you know what that list is, sir?

A. I think it is $1.50.

Q. And does the Timberlake Grocery Company receive any discount or allowance from the Morton Salt Company on such purchases?

A. Yes, accumulated purchases over a period of time.

640 Q. How much is that, sir?

A. I think that is 10 cents per case.

Q. Ten cents per case?

A. Ten cents per case.

Q. Would you raise your voice a bit, sir?

A. Yes, sir.

Q. Does the Timberlake Grocery Company at Thomasville, Georgia, purchase 5,000 cases of Morton's free run-

ning and iodized salt during a twelve consecutive months' period?

A. No, sir.

Q. Do you know approximately how many cases is purchased during the years 1940 and 1941?

A. No, sir.

Q. Does the Timberlake Grocery Company purchase salt from Morton Salt Company on a carload basis?

A. In most cases, it would be pool cars.

Q. In pool cars?

A. Yes, sir.

Q. Does the Timberlake Grocery Company receive a carload discount on all types of salt, except the Morton's free running and iodized salt, on a carload basis?

A. All of the salt that is billed to us, all of the salt in each individual car is billed to us on a carload basis.

Q. Do you know whether or not it receives a discount on that carload basis.

641 A. You mean, on all salt?

Q. Yes, other than the Morton's free running and iodized.

A. No, sir, there is no discount, to my knowledge.

Q. How are orders placed by the Timberlake Grocery Company with the Morton Salt Company for its round package free running salt?

A. It is generally placed through brokers presenting the line of Morton's salt.

Q. Where is that broker located, sir?

A. In Columbus, Georgia.

Q. In Columbus, Georgia?

A. Yes.

Q. And the orders are placed directly with the broker by the Timberlake Grocery Company?

A. Given to the broker's representative.

Q. Who calls at the office of the Timberlake Grocery Company?

A. Yes, sir.

Q. And as a result of which, salt is shipped by the Morton Salt Company direct to the Timberlake Grocery Company in Thomasville, Georgia?

A. It may come direct to the Timberlake Grocery Company, or it may go to a neighboring business, and we haul it from the point of delivery.

Q. Does any salt that is shipped by the Morton

642 Salt Company as a result of orders placed by the Timberlake Grocery Company through the broker in Columbus, shipped to the Thomas & Howard Company at Columbia, South Carolina, and then reshipped to the Timberlake Grocery Company at Thomasville, Georgia?

A. No, sir.

Q. None of the salt comes through the Thomas & Howard store at Columbia, South Carolina?

A. No, sir.

Q. Does any salt come through any Thomas & Howard branch to the Timberlake Grocery Company?

A. No, sir.

Q. What is the resale price of salt sold by the Timberlake Grocery Company to the retailers?

A. $1.65 a case.

Q. Are there any retail stores affiliated with, or connected with, controlled by the Timberlake Grocery Company?

A. No, sir.

Q. You are strictly a wholesaler?

A. Yes, sir.

Q. Has there been an occasion where the Timberlake Grocery Company has purchased a full car of salt from the Morton Salt Company?

A. It might have on some occasions, but they would be rare.

643 Q. It would be an exception to the rule, and not the general rule?

A. Yes, sir.

Q. Could you estimate for us approximately the number of cases of Morton's free running salt purchased by the Timberlake Grocery Company?

Mr. McBride: If the Examiner please, that question has been asked and answered already, that he did not know, and I object to it on that ground.

Mr. Haslett: If it has been asked and answered, Mr. Examiner, I will withdraw it.

Trial Examiner Purcell: My recollection isn't quite clear on it. Have you answered that question, Mr. Witness?

The Witness: Yes, I answered "no."

Trial Examiner Purcell: And you cannot approximate it?

The Witness: I can give you a figure, yes.

Trial Examiner Purcell: Is that satisfactory, Mr. Haslett?

Mr. Haslett: Yes, sir.

By Mr. Haslett:

Q. Would you approximate the figure, sir?

A. I would say about 900 to 1,000 cases a year.

Q. Does the Timberlake Grocery Company sell gro-
644 ceries and allied products to retailers in competition with any branch of Thomas & Howard?

A. Do you mean the Thomasville house, or the Timberlake Grocery Company of Thomasville and the branch at Macon?

Q. The Timberlake Grocery Company at both Thomasville and Macon.

A. They do not, in Thomasville, and I am not positive about Macon.

Q. You don't know as to Macon?

A. I do not.

Q. Does the Timberlake Grocery Company,—and when I say the Grocery Company without specifying any particular town—I mean both branches, compete in the resale of groceries and allied products with C. D. Kenny Company?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Guy, I believe you testified that the resale price of the Morton's blue can of Timberlake Grocery Company was $1.65 a case?

A. Yes, sir.

Q. What is the generally prevalent resale price of your competing wholesalers in your territory on Morton's blue can?

645 A. The same.

Q. The same price?

A. Yes, sir.

Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: That is all, and thank you very much, Mr. Guy.

(Witness excused.)

646 Mr. Haslett: Mr. Rhodes, come around and take the stand, please.

CARL RHODES was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Please state your full name for the record, Mr. Rhodes.
A. Carl Rhodes.
Q. And where do you reside, sir?
A. Quitman, Georgia.
Q. And what business are you engaged in?
A. Chain store business.
Q. And with what company are you associated, sir?
A. With the Roundtree Grocery Company.
Q. And where is that located?
A. That is warehoused at Americus.
Q. Where is its principal office and place of business?
A. Quitman.
Q. Quitman, Georgia?
647 A. Yes, sir.
Q. What is the business of the Roundtree Grocery Company?
A. They are chain store operators.
Q. They operate a number of retail chain stores?
A. Yes, sir.
Q. That sell groceries and allied products direct to the consuming public?
A. Yes, sir.
Q. What position do you hold with that company, sir?
A. I am vice-president and general manager.
Q. And is it a corporation?
A. Yes.
Q. And under the laws of what state was it incorporated?
A. Georgia.
Q. Have you competitors, sir?
A. Yes, sir.
Q. Would you name some of your competitors?
A. Rogers or Colonial, A&P, Simms, Winn-Lovett.
Q. And they are located in Jacksonville?
A. Yes, sir.
Q. The Colonial are Big Star Stores, aren't they?

A. Yes, sir.
Q. Do you sell salt?
A. Yes, sir.
Q. And does your company purchase salt from the
648 Morton Salt Company?
A. Yes, sir.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. Their free running blue label package.
Q. Free running blue label round package salt?
A. Yes.
Q. And you purchase in both the free running and the iodized?
A. Yes, sir.
Q. What price does your company pay the Morton Salt Company for free running salt per case?
A. $1.50 per case.
Q. And is that the same for the iodized salt, sir?
A. Yes, sir.
Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company?
A. No, sir.
Q. How are orders placed by your company with the Morton Salt Company?
A. I usually place the orders, mostly by mail to the broker in this town, Bowman Brokerage Company.
Q. And where are they located?
A. Gaines Street near the depot down here.
Q. Tallahassee, Florida?
A. Yes, sir.
649 Q. And they are brokers of the Morton Salt Company?
A. Yes, sir.
Q. And as a result of those orders, commodities are shipped to you by the Morton Salt Company?
A. Yes, shipped to this point, and we pick them up and bring them to Quitman at our convenience.
Q. But they are shipped to Tallahassee?
A. Yes, sir.
Q. And you pick them up by your own trucks and take them to Quitman?
A. Yes.
Q. Does the Morton Salt Company allow you any com-

pensation for the hauling of that salt from Tallahassee to Quitman?

A. Not a thing.

Q. I believe you stated you did not receive any discounts from Morton Salt?

A. We do not.

Q. In any form whatsoever?

A. Not a thing.

Q. At what price do you resell the salt to the consuming public, sir?

A. Eight and one-third cents. It is priced in the stores at 8⅓ cents a package.

Q. That is, three for 25 cents?

A. When they are purchased in that volume.

650 Q. Is that the purpose of the ⅓ cent price?

A. It is.

Q. Do you know the price at which A&P is reselling Morton salt to the consuming public in Quitman?

A. No, sir, I don't.

Q. Do you know the price at which the Big Star Stores are reselling Morton's salt to the consumer?

A. No, sir, I don't.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 77.

(The document referred to was marked "Commission's Exhibit 77" for identification.)

By Mr. Haslett:

Q. Mr. Witness, before I hand you this document, will you kindly state what the South Georgia Grocery Company is?

A. The South Georgia Grocery Company is a corporation that operates a portion of the stores that are operated by Roundtree Grocery Company.

Q. And is that located at Quitman, Georgia, also, sir?

A. Yes, sir.

Q. What is the connection between the South Georgia Grocery Company and the Roundtree Grocery Company?

A. The management is the same, but the stockholders are a little different, you know.

651 Q. Purchases made by the South Georgia Grocery Company are in effect purchases of the Roundtree Grocery Company?

A. Yes, sir.

Q. They are interchangeable in connection with their purchases?

A. Yes, sir.

Q. I hand you a document that has been marked for identification as Commission's Exhibit No. 77, and ask you to describe it, sir?

A. Well, this was a purchase by the South Georgia Grocery Company.

Q. Is that an invoice?

A. Yes.

Q. Has it a date?

A. Yes, sir.

Q. Would you describe it, please?

A. May 16, 1941.

Q. That is the date. Has is an invoice number?

A. Yes, sir.

Q. What is that number?

A. 120679.

Q. And is it an invoice of the Morton Salt Company?

A. Yes.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: I have no objection, Mr. Examiner, 652 other than to request that the invoice number be re-identified as No. 44333.

Trial Examiner Purcell: Is that the car number, 120679?

Mr. McBride: That is the car number, yes.

Trial Examiner Purcell: All right, what is the invoice number?

Mr. McBride: 44333.

Mr. Haslett: I will accept the correction.

Trial Examiner Purcell: There being no objection, the exhibit described will be received in evidence and marked by the reporter as Commission's Exhibit No. 77.

(The document referred to, heretofore marked "COMMISSION'S EXHIBIT 77" for identification, was received in evidence.)

By Mr. Haslett:

Q. I believe you stated that you placed your orders for Morton salt with a broker located at Tallahassee, Florida, and I believe you stated it was J. O. Bowman & Company?

A. The major portion of them; I think we have had one or two shipments to Thomasville.

Q. I see, sir. Well, what is the broker's name that handled the Morton Salt account in Tallahassee?

A. That is Bowman, but the one in Georgia, if you will allow me to say, is the Columbus broker.

653 Q. At Columbus, Georgia?

A. Yes.

Q. And orders are placed with the Columbus broker in practically the same manner and procedure as they are placed with the Tallahassee broker for purchases of salt from the Morton Salt Company?

A. That is right.

Q. I again hand you Commission's exhibit No. 77, and ask you to state whether that document is typical of invoices passing between the Morton Salt Company and the South Georgia Grocery Company?

Mr. McBride: If the Examiner please, I object to that unless counsel identifies the type of commodity covered by this particular invoice.

Trial Examiner Purcell: Objection sustained. I suppose counsel will do that.

Mr. Haslett: The document certainly speaks for itself.

Mr. McBride: But the question was directed as to whether it was typical of all invoices passing between the Morton Salt Company and the South Georgia Grocery Company.

Trial Examiner Pursell: The objection is sustained.

By Mr. Haslett:

Q. Is the document typical of invoices passing between the Morton Salt Company and the South Georgia
654 Grocery Company for Morton's iodized and free running salt?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 78.

(The document referred to was marked "Commission's Exhibit 78" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated by and between counsel for the Commission and counsel for the respondent that the document marked for identification as Commission's exhibit No. 78 is an invoice passing between the Morton Salt Company's general offices in Chicago, Illinois, and South Georgia Grocery

Company at Quitman, Georgia, on the date of December 23, 1940, invoice No. 20057?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's exhibit No. 78

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 78" was received in evidence.)

655 By Mr. Haslett:

Q. Does the South Georgia Grocery Company or the Roundtree Grocery Company purchase salt from the Morton Salt Company on a carload basis?

A. No, sir.

Q. Does it purchase any other type of salt other than the round package free running salt?

A. No, sir.

Q. All purchases, all salt purchased from the Morton Salt Company, is resold by the Roundtree Grocery Company and the South Georgia Grocery Company direct to the consumer through its own retail stores, is that right?

A. That is right.

Q. You don't sell any salt at all wholesale, sir?

A. No, sir.

Q. How do you pay your bills? Are they paid direct to the Morton Salt Company?

A. The check is written direct to them, yes. It is paid to them.

Q. And you transmit it on to Chicago, is that correct, sir?

A. I would say so. I would have to look at the invoice, but I think you are right.

Q. If a competitor of yours was reselling Morton's salt direct to the consuming public at 7 cents per package and you were selling it at your price of 8½ cents per pack-
656 age, would that in any way affect your business?

A. I don't think it would under the way it is handled at this time.

Trial Examiner Purcell: Under the way what?

The Witness: Under the way it is handled now, the way it is sold by our competitors.

By Mr. Haslett:

Q. I am not asking you the way it is sold by your competitors at the present time, I am asking you if a competitor of yours sold it at a cent and a third less than the price that you were selling it, would that in any way affect your business?

A. Yes.

Q. Would your business be in any way affected by the fact a competitor of yours was paying $1.40 a case for Morton's free running and Morton's iodized salt in the round package, and you were paying $1.50 a case for it, sir?

Mr. McBride: If the Examiner please, I object to that question for the reasons stated at length in the last hearing at New Orleans.

Trial Examiner Purcell: Objection overruled.

Mr. McBride: I reserve the right to appeal, as stipulated this morning.

Trial Examiner Purcell: It is so noted in the record.

657 The witness may answer.

The Witness: The question again, please?

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: No, sir, because our prices figure on retail.

By Mr. Haslett:

Q. Did you understand my question, sir?

Mr. McBride: If the Examiner please, I ask that that be stricken. The witness is permitted to answer as he hears the question.

Trial Examiner Purcell: If there is a doubt in counsel's mind as to whether or not the witness understood, I think he is entitled to inquire. After all, all we want are the facts. The counsel may inquire and the objection is overruled.

The Witness: I think I did.

Trial Examiner Purcell: The question is, Mr. Witness, did you understand counsel's question to you?

The witness: Yes, it would not affect us.

By Mr. Haslett:

Q. Would your business be in any way affected if a competitor of the Roundtree Grocery Company was pur-

chasing commodities at 10 per cent less from all sources
658 than you were purchasing them?

Mr. Mc Bride: If the Examiner please, I again interject my objection to that question. It has now been broadened to all general commodities.

Trial Examiner Purcell: I sustain the objection, Mr. Haslett, on very obvious grounds.

By Mr. Haslett:

Q. What effect would it have on your business if a competitor was selling round package salt to the consuming public in the Quitman area, the same area in which you operate, at 6-cents a package, where you were charging 8½ cents per package?

A. That would affect us.

Q. Did you know the Morton Salt Company grants and allows discounts on a so-called quantity basis?

A. I did not.

Q. Not until the time that I told you about it?

A. That is right.

Q. Since the time that I talked with you about a month ago, Mr. Rhodes, have you requested the Morton Salt Company to allow the South Georgia Grocery Company or the Roundtree Grocery Company a discount upon its purchases of Morton's salt?

A. No, sir, I haven't had anyone call on me since that time.

Q. Is the A&P Tea Company a factor in the retail
659 trade, retail market in Quitman?

A. They are on an average.

Q. How about the Colonial Stores, the Big Star Stores?

A. They are not in Quitman.

Q. Are they in Thomasville?

A. Yes.

Q. Do you operate in Thomasville?

A. Yes, sir.

Q. Are they a factor in that market?

A. Well, we have had better business since they operate up there, our sales have increased.

Q. How many stores do you operate?

A. 138.

Q. 138 retail stores?

A. Yes, sir.

Q. And the central purchasing office for all stores is the

Roundtree Grocery Company and the South Georgia Grocery Company?

A. Well, we operate another corporation, the Capital City Grocery Company, that is three.

Q. Where is that located, sir?

A. At this place.

Q. In Tallahassee?

A. Yes.

Q. Do you do the purchasing for that firm, also, sir?

660 A. The major part of it, yes.

Q. And is that handled through the Quitman office?

A. The Quitman office, yes.

Q. And the Capital City Grocery Company operates in the north Florida area?

A. And part of Georgia and part of Alabama.

Q. And will you tell us the number of retail outlets of all three companies?

A. That is what I just gave you, 138.

Q. 138 would be the aggregate of all three companies, the Capital City Grocery Company, the Roundtree Grocery Company and the South Georgia Grocery Company?

A. That is right.

Q. Does the A&P Tea Company operate in Tallahassee?

A. Yes, sir.

Q. Does Winn-Lovett operate in Tallahassee?

A. They do.

Q. They are competitors of the Capital City Stores here in Tallahassee?

A. Yes, sir.

Q. Do Capital City Stores in Tallahassee sell Morton's salt to the consuming public?

A. Yes.

Q. And the purchases are made in the same manner in which you are making purchases for the other stores?

661 A. Yes, sir.

Q. Has Morton Salt Company ever offered to do specialty work for the stores operated by your firms?

A. Not that I recall.

Mr. Mc Bride: Just a minute. If the Examiner please, it hasn't been established yet that the witness knows what specialty work is. That must be first established before that question is propounded.

Mr. Haslett: I will lay a foundation for it, Mr. McBride.

By Mr. Haslett:

Q. Do you know what type of promotional work is done by the Morton Salt Company by its salesmen in connection with the resale of Morton's salt to the consuming public?

A. No, sir, I don't.

Q. Has the Morton Salt Company ever offered to place display posters in any of your stores, advertising Morton's free running and Morton's iodized salt?

A. I can't recall that they have. Now, probably their broker has at times, but I just can't give you that definitely.

Q. The broker would offer to do that type of promotional work?

A. Or have it done, I suppose, by the specialty workers that are employed by Morton.

662 Q. Did you know that Morton Salt Company offered specialty work or display advertising to be used in retail stores in connection with the resale of its products?

A. To say positively, I couldn't say that they did.

Q. You don't know whether they did offer that or not, sir?

A. I do not.

Q. Is that what you are trying to say?

A. That is what I am trying to say, because I can't remember the particular part of that incident.

Q. If Morton Salt Company offered to have its salesman place in your retail stores, a number of them, posters, counter displays, window displays, and floor displays and streamers, advertising and promoting the sale of Morton's free running and round package salt, would you accept it?

A. I would in some of the stores, but not all of them.

Q. Up until this time, you didn't know that such a promotional activity was in effect, is that correct, sir?

Mr. Mc Bride: The witness has answered that several times.

Trial Examiner Purcell: He said he didn't know, Mr. Haslett.

By Mr. Haslett:

Q. Do you purchase salt from any other salt company other than Morton Salt Company?

A. Yes.

663 Q. Could you name such salt companies?

A. We purchase some from Ohio and International.

Q. They are the only two?

A. Myles, we purchase some from Myles.
Q. Do you purchase any from the Avery Island Salt Company?
A. No, sir.
Q. How about the Mulkey Salt Company?
A. No, sir.
Mr. Haslett: I think that is all, Mr. McBride, your witness.
Mr. McBride: I have no cross examination.
Mr. Haslett: All right, you are excused, sir.
(Witness excused.)
Mr. Haslett: Mr. Brandon.

E. R. BRANDON was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your name, your full name, Mr. Brandon?
A. E. R. Brandon.
Q. And where do you reside, sir?
A. Thomasville.
Q. Is that in the state of Georgia?
664 A. Yes, sir.
Q. And what business are you engaged in?
A. Wholesale grocery business.
Q. Wholesale grocery business?
A. Yes, sir.
Q. With what company are you connected?
A. Brandon Grocery Company.
Q. And where is the Brandon Grocery Company located?
A. Thomasville, Georgia.
Q. What position do you hold with that company?
A. President.
Q. President?
A. Yes.
Q. What is the business of the Brandon Wholesale Grocery Company?
A. What is their business?
Q. Yes.
A. It is a two-fold business. It originally was nothing

but a wholesale grocery business, but today it is a wholesale grocery business and an automobile accessory wholesale business.

Q. Do you sell groceries and allied products to the retail stores?

A. Yes, sir.

Q. And you also sell—

665 A. Automobile accessories, and we sell largely to car agents and garages.

Q. Well, all of my questions are going to be confined to the grocery business. How long have you been connected with the Brandon Grocery Company?

A. I practically grew up in it.

Q. For a number of years?

A. Yes, it was originally founded by my father.

Q. And does your company have competitors?

A. Yes, sir.

Q. And would you name some of those competitors?

A. Well, outside of Thomasville, we have quite a little competition from Moultrie Grocery Company, Moultrie, Georgia, and A. S. Pendleton Company at Valdosta, and then H. V. Kell Company at Cairo, and we have some competition from Timberlake Grocery Company.

Q. Any others?

A. Oh, I guess there are several others. I just can't think of all of them just offhand.

Q. Timberlake is a competitor of yours?

A. Yes, sir.

Q. Do you encounter the competition of C. D. Kenny Company in any of your territory?

A. Yes, sir.

Q. Do you encounter the competition of Thomas & Howard?

666 A. No, sir.

Q. Does your company purchase salt?

A. Yes, sir.

Q. And does it purchase salt from the Morton Salt Company?

A. Sometimes.

Q. And what type of salt is purchased from the Morton Salt Company?

A. We usually buy their plain and iodized package salt, free running package.

Q. And do you know what price you pay for it, sir?

A. I am not thoroughly familiar with the purchase of it. I have at times purchased it, but it has been some time ago. I can give you the best of my recollection.

Q. All right, sir.

A. $1.50 now, is the best of my recollection.

Q. And does your company purchase any salt from the Morton Salt Company on a carload basis?

A. No, we buy it in a pool car, as a rule.

Q. And do you purchase any other type of salt from the Morton Salt Company?

A. I don't know.

Q. Does your company receive any discount or allowance of any type from the Morton Salt Company on its purchases?

A. Not that I ever heard of.

Q. Approximately how many cases of round package free running salt does your company purchase from
667 the Morton Salt Company in a year?

A. We don't sell a great deal of it. I don't suppose we sell over two or three hundred cases a year.

Q. What price do you resell it for?

A. We try to make 25-cents a case profit on it, but we are not successful in doing so. In other words, our competitors quite often quote it less than that, and for that reason we quite often miss the sale of it.

Q. And what is the general resale price of it?

A. You mean, from a jobber to a retailer?

Q. Yes, from a jobber to a retailer, sir.

A. As a rule, it is $1.65.

Q. How do you place your orders for salt that is purchased from the Morton Salt Company?

A. Usually, my recollection is, the gentleman who represents a brokerage concern at Columbus, makes up a pool car, sometimes in Thomasville, sometimes in Tallahassee and sometimes in other little towns nearby, and when he does, we haul it from that town, unless it happens to be in our own town.

Q. You haul it from the point of destination of the car to your particular warehouse?

A. Exactly.

Q. And if it is in Thomasville, Georgia, you haul it from the siding where the car is to your warehouse?

668 A. Yes, sir.

Q. Morton Salt Company doesn't furnish trans-

portation from the car to your warehouse, is that correct, sir?

A. No, sir.

Q. I believe you stated you sell it for $1.65 a case?

A. We are forced to do it in some instances. We quite often miss sales on it. You see, we try to make a quarter on it, and we can't do it, and for that reason we don't sell much of it.

Q. Why can't you do it, sir?

A. Most of our competitors are selling it for 15-cents a case profit, that is, they are selling it for $1.65 and we are trying to get $1.75.

Q. Would your business in any way be affected by the fact that a competitor of yours was selling Morton salt at $1.60 a case while you were selling it at $1.65?

A. Certainly it would.

Q. And would your business be affected in any way if a competitor of yours was paying $1.40 a case, while at the same time you were paying $1.50 a case for Morton's free running salt?

A. Yes, sir.

Mr. McBride: Mr. Examiner, my usual objection and reservation to that question.

669 Trial Examiner Purcell: It is so noted on the record.

Mr. McBride: I am sorry, I didn't hear the witness' answer.

(The answer referred to was read by the reporter.)

Mr. Haslett: Mr. Reporter, I hand you herewith a document and ask that it be marked for identification as Commission's Exhibit No. 79.

(The document referred to was marked "Commission's Exhibit 79" for identification.)

Mr. Haslett: Is it stipulated, Mr. McBride, that the document marked for identification as Commission's exhibit No. 79 is an invoice from Morton Salt Company to the Brandon Grocery Company of Thomasville, Georgia, under date of September 18, 1941, invoice No. 677121?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be marked by the reporter as Commission's Exhibit No. 79 in evidence.

(The document referred to, heretofore marked for identification as "COMMISSION'S EXHIBIT 79" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you another
670 document and ask that you mark it for identification as Commission's Exhibit No. 80.

(The document referred to was marked for identification as "Commission's Exhibit 80")

Mr. Haslett: Is it also stipulated, Mr. McBride, that the document marked for identification as Commission's Exhibit No. 80 is an invoice from the Morton Salt Company to the Brandon Grocery Company, Thomasville, Georgia, under date of September 27, 1940, invoice No. 262?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence, and the reporter will mark it Commission's Exhibit No. 80.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 80" was received in evidence.)

By Mr. Haslett:

Q. I believe you testified, Mr. Brandon, that several wholesalers pooled their purchases in order to buy a carload of salt?

A. Yes, sir.

Mr. McBride: If the Examiner please, I think I
671 will have to object to that question, the way counsel has framed it. If the reporter will read it back, you will see that he has asked whether several wholesalers pool their purchases.

Trial Examiner Purcell: Read the question back, please.

(The question referred to was read by the reporter.)

Mr. McBride: I am not sure what he means by "pool." If he wants to inquire whether they are shipments moving in a car together, that is one thing.

The Witness: That is what I meant.

Trial Examiner Purcell: The witness will please do nothing but answer the question that is put to him.

The Witness: I beg your pardon.

Trial Examiner Purcell: I am sorry the witness interrupted my train of thought.

Mr. McBride: I am not trying to be ultra technical, but I hope the Examiner sees the distinction I am attempting to draw. I think if counsel reframes his question, I will have no objection.

Trial Examiner Purcell: I am sure counsel will do that. I won't rule on the objection.

Mr. McBride: Thank you.

By Mr. Haslett:

Q. Mr. Brandon, how are shipments of salt transported to the Brandon Grocery Company by the Morton Salt—

672 Company?

A. Well, I thought I answered that. Sometimes a pool car comes to Thomasville, and sometimes it comes to these nearby towns.

Q. And what do you mean by a "pool car," sir?

A. Well, purchases of different individuals that go in the same boxcar.

Q. And is it a full carload of salt?

A. In order to get a carload rate and a carload price, that is very customary.

Q. And there are other types of salt in the car, other than Morton's iodized and free running salt?

A. Sometimes.

Q. Well, on those other types, does the Brandon Grocery Company receive any discount on a carload basis?

A. Not that I know of.

Mr. Haslett: I think that is all. Your witness, Mr. McBride.

Mr. McBride: I have only one question, Mr. Witness.

Cross-Examination by Mr. McBride.

Q. When you purchase and receive shipments in pool cars, I believe that you testified that you got the regular carload price on so much of your salt as moved in that pool car?

A. That is the way I have always understood it.

673 Q. And for the purposes which you made and accepted delivery in that fashion, you did not pay a less than carload price or rate for it?

A. That is the best of my recollection.

Mr. McBride: That is all.

Mr. Haslett: That is all, Mr. Brandon.

(Witness excused.)

Mr. Haslett: May I recall to the stand for further direct examination Mr. Cameron of the Morton Salt Company?

Trial Examiner Purcell: Note that Mr. Cameron has been heretofore sworn, and resumed the stand on behalf of the Commission.

ASHBY CAMERON was thereupon recalled as a witness for the Commission, having been previously duly sworn, and testified further as follows:

Direct Examination by Mr. Haslett (Continued).

Q. Mr. Cameron, this morning we were talking about specialty work, if you recall, sir.

A. Yes, sir.

Q. Will you state whether or not any specialty work is carried on by the Morton Salt Company through its brokers?

A. Through the brokers?

674 Q. Yes.

A. The broker has nothing to do with it. They sometimes suggest that some jobbers are asking for specialty work, and if there is a good spot there to do it, they will pass the word on to us.

Q. He just makes suggestions on rare occasions?

A. Right.

Q. It is an exception to the rule, and not the general rule?

A. Well, they will suggest to us at any time they think it will be helpful.

Q. I hand you Commission's Exhibit No. 80, and call your particular attention to the first item that appears thereon under the heading "Competitive adj," and I will ask you to explain what the 15-cents is?

A. That was made—

Q. What is it, sir?

A. Just what it says, "Competitive adjustment."

Q. "adj" means adjustment?

A. That is right.

Q. And it was made for what purpose?

A. It is to meet prices quoted by competitors.

Q. How did the price of the competitor come to your attention?

A. Our salesman picked it up—

675 Mr. McBride: If the Examiner please, I think I will have to object to that, unless it is identified as to this particular price, and this particular instance, as to whether this witness knows of this particular instance or not.

Trial Examiner Purcell: Well, he must know, or he wouldn't have undertaken to testify, and he has the exhibit before him, which speaks for itself.

I will overrule the objection. You may answer, sir.

The witness: —from possibly this customer or his neighboring customer that is affected in the same territory.

By Mr. Haslett:

Q. That competitors were selling salt of the same grade, type and size at a lower price?

A. Correct.

Q. And you effectuated the 15-cents in order to meet that lower price?

A. That is right.

Q. Is that correct, sir?

A. Correct.

Q. And the salesmen make reports to your office that such competition is in effect, is that correct?

A. Correct.

Q. Is that true as to the other items that appear

676 under that column on Commission's Exhibit No. 80?

A. It is.

Q. How many days after the order is received is the invoice mailed?

A. After the order is received?

Q. That is right.

A. The invoice is mailed immediately after the car has been shipped. It can't be made up until they get the car number and everything to put on it.

Q. Would a salesman of the Morton Salt Company call upon the Brandon Grocery Company?

A. Yes.

Q. And not a broker?

A. Sometimes both.

Q. Where the salesman calls and solicite and receives orders from the Brandon Grocery Company, is brokerage paid the broker upon that order?

A. Yes, because the broker works the account regularly.

He makes a trip every week, and the salesman gets around there every two or three months.

Q. Well, how do you know that the salesman reported there was a 15-cent competitive adjustment on item No. 1, as appears on Commission's Exhibit No. 80?

A. How do I know?

Q. Yes, couldn't the broker have reported it as
677 well as the salesman?

A. Yes, the broker can report it, too.

Q. It comes to you in the regular course of your business?

A. Yes.

Trial Examiner Purcell: Do you have any independent knowledge of that particular transaction?

The Witness: Any independent knowledge?

Trial Examiner Purcell: Any independent knowledge of that transaction, aside from having the exhibit before you?

The Witness: No, this dates back to 1940.

By Mr. Haslett:

Q. Are you testifying as to the general policy of your company?

A. That is the usual manner in which we would handle it.

Q. Mr. Cameron, do you know the number of cases of free running salt sold out of the Nashville office for the years 1937, 1938, 1939 and 1940?

A. No.

Q. Could that information be obtained for us?

A. Yes.

Q. Could you also obtain the information for us of the number of cases of salt sold by the Morton Salt Company through the Nashville office to the Timberlake Grocery Company of Thomasville, Georgia?

A. Yes, sir.

678 Q. For the years 1939 and 1940?

A. I think so.

Q. Just those two years, sir?

A. Yes, sir.

Q. Do you instruct your salesmen to advise all customers of the Morton Salt Company that if they purchase in a specified quantity during a twelve months period, that they will receive discounts?

A. Yes.

Q. And do you know whether or not all your customers know that such discounts are in effect?

A. No.

Q. Do you know whether or not your company has offered the promotional specialty work to the Roundtree Grocery Company, The South Georgia Grocery Company and the Capital City Stores?

A. No, I don't know.

Q. You don't know whether they have or not?

A. No, I don't.

Q. Do you publicize the fact that you make promotional specialty work available to your customers?

A. That is generally known by all the trade, I think.

Q. Do you send any dodgers out to publicize that fact?

A. Send any what?

Q. Dodgers, posters, billboards, any type of advertising?

A. To publicize the fact that we do specialty work?

679 Q. That is right.

A. No.

Q. You do not?

A. No.

Q. Do you have anything to do with the arrangement of credit with your various customers?

A. No.

Q. Is that all handled out of the Chicago office?

A. Yes, sir.

Q. The practices and policies of this office of the Morton Salt Company in Nashville, Tennessee, are similar to the practices and policies of the Morton Salt Company in other territories where they have offices, is that correct?

A. I would think so; I haven't been in any other branches.

Q. You have been in Nashville ever since you have been with the company?

A. No, I have been in Nashville almost 12 years. I have been with the company 19 years.

Q. Where were you located before that time, sir?

A. In Kentucky, part of West Virginia and part of Virginia.

Q. Where was your office located?

A. We didn't have an office. I worked out of the Chicago office direct.

Q. You were a salesman out of the Chicago office?

A. Yes.

680 Q. And you worked under the general supervision of the sales manager of the Chicago office?

A. That is correct.

Q. And now, as the manager of Morton's office in Nashville, you are under the supervision of the general sales manager in Chicago?

A. Correct.

Q. All policies and practices of the Nashville office are controlled and managed by the Chicago office?

A. Yes, sir.

Q. Would it be possible for you to obtain for us the number of round package free running salt sold to the Roundtree Grocery Company, Capital City Stores and the South Georgia Grocery Company during the years 1939 and 1940?

A. I would think so, yes.

Q. Would you get that information for us?

A. Yes, if you will give me a record of it.

Q. Has the business of the Morton Salt Company in your office increased constantly during the last four years?

A. On what?

Q. On all grades of salt, your general over-all business?

A. I imagine it will run just about the same.

Q. About the same?

A. Just about the same. It might fluctuate a few hundred tons up or down.

681 Q. Where does the salt come from that is sold through your office, what plant?

A. We ship out of Port Huron, Michigan, then occasionally out of Hutchinson, Kansas, and Grand Saline, Texas.

Q. Those three plants?

A. Yes, sir.

Q. And that is determined by the Chicago office?

A. It is determined by the grade, too, the grade of salt.

Q. Well, the orders would have something to do with it, the type of orders?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Cameron, you hold in your hand, I believe, Commission's Exhibit No. 80.

A. Yes, sir.

Q. And reference has been made to the competitive adjustment notation, by counsel for the Commission, as it appears on Exhibit 80.

A. What is that?

Mr. McBride: Read the question back.

(The question referred to was ready by the reporter.)

The Witness: Yes.

682 By Mr. McBride:

Q. Any competitive adjustment of that sort would be authorized only by the Chicago office, would it not?

A. Yes, sir.

Q. And that would be based upon reports transported through you from your field men to Chicago?

A. That is right.

Q. No competitive adjustments can be authorized by you as branch manager, can they?

A. No, sir.

Q. You testified this morning, Mr. Cameron, on your direct examination, that where you reshipped, or redistributed, I believe you termed it, cases of Morton's blue cans from the destination point of a car, that the price to the customer on such redistribution was $1.60, is that correct?

A. Correct.

Q. Are those shipments or redistributions done at your request, or are they made at the customer's request?

A. At the customer's request.

Q. And does the customer in each instance know that he can take the salt at $1.50 a case f.o.b. the car, at destination, if he calls for it?

A. Yes, sir.

Q. Do you have very many such LCL distributions to which you just testified?

683 A. I would say one-tenth of one per cent.

Q. It is on very rare occasions, then?

A. Very rare.

Q. And on special request of the customer receiving the salt?

A. That is correct.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Cameron, again referring your good attention to Commission's exhibit that you have in your hand, Commission's Exhibit No. 80, is it the policy of the Morton Salt Compnay to grant a comptitive adjustment on salt that has been sold to a customer and is in his warehouse and the price is changed on such salt?

Mr. McBride: If the Examiner please, I will have to object to that. There is ample testimony that the policies of the Morton Salt Company are determined at Chicago, and not by this witness.

Trial Examiner Purcell: That is a question of fact, Mr. McBride, which I don't think you are entitled to place on the record, sir, as to the policies being determined in Chicago. That is what we are attempting to find out now.

Mr. McBride: I am sorry, but I don't understand the Examiner's comment on my objection.

684 Trial Examiner Purcell: Let's go off the record a second.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. I will uphold the objection.

Mr. Haslett: That is all, sir, thank you very much, Mr. Cameron.

(Witness excused.)

685 Room 309,
U. S. Post Office Building,
Tampa, Florida,
Wednesday, April 29, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

686 Mr. Haslett: I will call as my first witness Mr. Harry M. Johnson.

HARRY M. JOHNSON was thereupon called as a witness for the Commission, having been first duly
687 sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Johnson?
A. What is that?
Q. Will you kindly state your full name for the record?
A. Harry M. Johnson.
Q. And where do you reside?
A. My home residence?
Q. Is it in Tampa, Florida?
A. Yes, Tampa, Florida.
Q. And what business are you engaged in?
A. Wholesale grocery business.
Q. How long have you been in the wholesale grocery business?
A. Thirty-eight years.
Q. And with what company are you connected?
A. J. Q. Brantley Company.
Q. And where is that company located?

A. 112 Water Street.

Q. What is the business of the J. Q. Brantley Company?

A. Wholesale groceries.

Q. Does it sell groceries and allied products to the retail stores?

688 A. Yes, sir.

Q. Is it a corporation?

A. Yes, sir.

Q. Incorporated under the laws of what state?

A. Florida.

Q. Has it any branches?

A. No, sir.

Q. Does your company have any competitors?

A. Yes, sir.

Q. Would you name me some of your competitors?

A. Well, O'Berry & Hall Company, Berger & Rachaelson, Adams-Kennedy Company, Markey-Harmon Company.

Q. Is Winn-Lovett one of your competitors?

A. No, they are in Jacksonville, I think.

Q. Well, you don't know, sir?

A. I don't know whether they run any retail stores or not.

Q. Do they run any wholesale stores?

A. Well, I couldn't answer that intelligently. I understand that they are connected with the Table Supply Company. Another, the Pay & Take Wholesale Grocery.

Q. The Economy Wholesale Grocery?

A. Yes, sir.

Q. Are they a competitor of yours?

A. Yes, sir, Economy Wholesale Grocery.

Q. Does your company handle or sell salt?

689 A. Yes, sir.

Q. Does it purchase any salt from the Morton Salt Company?

A. Yes, sir.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Well, we buy mostly Morton's free running salt.

Q. Is that in the blue package?

A. The blue package, yes.

Q. Do you buy any iodized salt from Morton Salt Company?

A. Yes.
Q. Is that in the same type of package?
A. Yes.
Q. And in addition to those two brans, do you buy any Kleer salt?
A. We haven't for the last three or four years.
Q. Do you buy any salt in bags, 100 pound bags?
A. Yes, sir.
Q. What is the price at present that your company pays for the blue label round package salt?
A. $1.50.
Q. And has that price been in effect for a long time?
A. Yes.
Q. Could you state how long it has been in effect, if you know, sir?
690 A. No, I couldn't offhand, but it has been a good many years.
Q. Does your company make purchases from the Morton Salt Company on carload basis?
A. We buy in what they term pool cars.
Q. And you get the carload price?
A. We are supposed to.
Q. Will you please state the method employed by your company in placing orders for ultimate shipment of salt from the Morton Salt Company to your company?
A. When they make up these pool cars, we generally give their representative our requirements.
Q. When you say "their representative," do you mean their salesman or their broker?
A. Well, they have them both here. Sometimes the broker makes it up and sometimes the salesman makes it up.
Q. But you do place your orders with their representative?
A. Yes.
Q. As a result of those orders, salt is shipped to you from the Morton Salt Company?
A. Yes, sir.
Q. What is the general sales price charged by your company for Morton's round package free running salt to your retail customers?
A. Well, we have two prices, a delivered price and
691 a cash and carry price.
Q. Now, what is the delivered price?

A. We get $1.70.

Q. For the delivered price?

A. Yes.

Q. And what is the cash and carry price?

A. $1.60.

Q. $1.60?

A. Yes.

Q. And is that true, also, as to the iodized round package salt?

A. Yes.

Q. Does your company receive any discount or allowances of any kind from the Morton Salt Company on the purchases made by your company from the Morton Salt Company?

A. No, sir.

Q. You don't get any discount or allowance of any kind?

A. Of any kind, cash discount, or anything.

Q. Have you ever received any discount from them?

A. No, sir.

Q. Do you ever receive any discount on the carload purchases, that is, where it is pooled?

A. No, sir.

Q. Would you explain to us in some detail how these orders are placed with the representative of the Morton
692 Salt Company as a result of which salt is shipped to you, when you refer to the pool car?

A. Well, he just comes in and states that he is making up a pool car for shipment at such and such a time, and we generally check our stocks and give him orders for what we might need by the time that pool car arrives.

Q. And does your company then haul the salt from the siding where the cars come to rest?

A. Yes, we are notified when the car arrives, and we have to haul it from the car to our warehouse, or from the boat line to our warehouse, whichever the case might be.

Q. Would your business be affected by the fact that a competitor of your company sold Morton's round package salt, blue label salt, to your customers at a 2-cent differential in price?

A. Yes, sir.

Q. And if that 2-cent differential in price is under the price at which you were offering to sell Morton's blue label salt, would that affect you in any way, sir?

A. Yes, sir.

Q. And if a competitor of yours was selling Morton's blue label round package salt to your customers at $1.50 per case, that is the price that you pay for it, would your business in any way be affected?

A. We just couldn't sell the salt.

693 Q. Is your business affected by the fact that some of your competitors pay $1.40 a case for Morton's free running and iodized salt, while at the same time you pay $1.50 for the same kind of salt?

A. Yes, sir.

Mr. McBride: Mr. Examiner, I make my usual objection and reservation to appeal.

Trial Examiner Purcell: You may have it, sir. You may answer, please.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Would that effect be an adverse effect?

A. Yes, sir.

Q. How much Morton's free running salt do you purchase during a year, sir?

A. Well, I made a report of that this morning before I came up here. Will you permit me to read it? I just took it out of the books. Do you want it by years for the last two or three years?

Q. Yes, beginning with 1939, if you have it.

A. Well, in 1939, we purchased 360 cases; in 1940, we purchased 218 cases, and in 1941 we purchased 177 cases.

Q. And have you the period for 1938 there before you, sir?

A. No, I haven't. I have only got 1939, 1940 and 1941.

Q. So, your business has decreased since the year 1939?

694 A. In sales?

Q. In sales, of salt.

A. Our business in 1940 was around $30,000 more than it was in 1939.

Q. I am talking about just in the sale of salt.

A. Yes, sir.

Q. Has it decreased?

A. Yes, sir.

Q. As the figures will show?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you two documents and ask you to mark them for identification as Commission's exhibit No. 81-A and 81-B.

(The documents referred to were marked "Commission's Exhibit 81-A and 81-B" for identification.)

By Mr. Haslett:

Q. Mr. Johnson, I hand you two documents marked for identification as Commission's exhibit No. 81-A and B, and ask you to describe Commission's Exhibit No. 81-A. What is that?

A. That is 15 cases of 24 one pound ten ounce Morton's free running salt.

Q. Is that an invoice from the Morton Salt Company?

A. This is not; the one I gave you was.

Q. Is that a photostatic copy of the invoice?

695 A. Yes.

Q. Passing from the Morton Salt Company to the J. Q. Brantley Company?

A. Yes, sir.

Q. And has it an invoice number?

A. Yes, sir.

Q. What is that invoice number?

A. 17626.

Q. And has it a date, sir?

A. December 11, 1940.

Q. Now, I hand you a document marked for identification as Commission's exhibit No. 81-B, and ask you to describe that one.

A. Well, this is a delivery order.

Q. Is that a photostatic copy of a delivery order?

A. Yes, sir.

Q. Under what date, sir?

A. This is under date of December 18, 1940.

Q. And consigned to the J. Q. Brantley Company?

A. Yes, sir.

Q. And is that delivery order, does it have a number, sir?

A. Yes, G-9712.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. McBride: No objection.

696 Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence.

and the reporter will mark them Commission's Exhibit 81-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT, 81-A, and 81-B," were received in evidence.)

By Mr. Haslett:

Q. Mr. Johnson, I again hand you Commission's exhibit 81-A and B, and ask you to state whether Commission's exhibit 81-A, which is the invoice, is typical of the invoices passing between the Morton Salt Company and the J. Q. Brantley Company for Morton's free running and Morton's iodized salt?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you herewith two documents and ask that they be marked for identification as Commission's exhibit 82-A and B.

(The documents referred to were marked for identification as "Commission's Exhibit 82-A and 82-B.")

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated by and between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit 82-A is a true and correct photostatic copy of an invoice of the
697 Morton Salt Company of commodities sold to the J. Q. Brantley Company of Tampa, Florida, under date of April 9, 1941, invoice No. 38525?

Mr. McBride: That is correct.

Mr. Haslett: And am I also correct when I state that the document marked for identification as Commission's Exhibit 82-B is a true and correct photostat copy of a shipping order from the Tampa Union Terminal, Inc., shipper's No. H-6381, under date of April 15, 1941, consigned to J. Q. Brantley Company, Tampa, Florida, for Morton's free running, Morton's iodized salt, and Morton's ice cream salt, shippers Morton Salt Company?

Mr. McBride: That is correct.

Mr. Haslett: I offer them, Mr. Examiner.

Trial Examiner Purcell: Is there any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked by the reporter as Commission's exhibit No. 82-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 82-A and 82-B" were received in evidence.)

By Mr. Haslett:

Q. Is Bryan-Keefe & Company a competitor of the
698 J. Q. Brantley Company?

A. Yes, sir.

Q. How about the Tropical Grocery Company?

A. Yes, sir.

Q. Where is the Tropical Grocery Company located, sir, if you know?

A. Well, they are a branch of Bryan-Keefe, and I think their headquarters are in St. Petersburg.

Q. And how far is St. Petersburg?

A. Over the bridge; I think they call it 18 miles.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. How many salesmen do you employ, Mr. Johnson?

A. Do you mean that travel, or stay in the house?

Q. That travel out of your house.

A. One.

Q. Just one?

A. Yes.

Q. Have you only employed one salesman for several years' time?

A. No, we did have two.

Q. You did have two?

A. Yes.

Q. And it was their job to represent your house in
699 all of the various grocery lines that you carried, is that correct?

A. Yes.

Q. How large a territory did they cover, Mr. Johnson, just roughly, in radius of miles, thirty miles of Tampa, or what?

A. I would say about fifty miles.

Q. A fifty mile radius of Tampa?

A. Yes.

Q. Do you buy salt from any company other than the Morton Salt Company?

A. Yes.

Q. What companies do you buy from?

A. Myles Salt Company, Carey Salt Company, and Jefferson Island Salt Company.

Q. Do you buy anything from the International Salt Company?

A. Yes, I buy from the International Salt Company.

Q. Has that been true for the years 1939, 1940 and 1941?

A. Yes, sir.

Q. Can you state whether or not, Mr. Johnson, your total salt business has declined or increased, or remained approximately the same for the years in question, 1939, 1940, and 1941?

Mr. Haslett: I object to that, Mr. Examiner, for the reason that it is irrelevant and immaterial to the issues of this case whether his total salt business has declined
700 or increased.

Trial Examiner Purcell: The objection is overruled.

Mr. Haslett: May I finish, please?

Trial Examiner Purcell: I beg your pardon, I thought you had finished. Go ahead.

Mr. Haslett: The issues in this case are directed against the Morton Salt Company, and not against the industry. His business may increase as a result of a number of factors that have no relevancy to this case. It is whether or not the business of the Morton Salt Company's products sold to this company has increased, is what the Commission is interested in, and not the general policy or the general increase of this company's business.

Mr. McBride: Do you wish to hear from me, Mr. Examiner?

Trial Examiner Purcell: Objection is overruled. I think it is very material, for the reason that you yourself have practically brought up, made the issue, by attempting to show that his business has fallen off steadily. Now, if in answer to this question, counsel for the respondent may elicit the fact that the witness has elected to buy more salt or a larger proportion of his salt from the International or other competitors of Morton Salt Company, I think it is very material that he be permitted to show that.

701 Now, we will go off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Let's go ahead.

Mr. McBride: Read the last question, please.

(The question referred to was read by the reporter.)

The Witness: Well, Judge, to answer that, as the attorney has pointed out, now, our sales on cheaper salt and sack salt in bulk in tonnage has increased.

Mr. McBride: If the Examiner please, I don't believe that answer is responsive to my question.

Will you read the answer back to me, Mr. Reporter?

(The answer referred to was read by the reporter.)

Mr. McBride: I don't believe, Mr. Examiner, I wish to have "what the attorney has pointed out" involved in the witness' answer.

Trial Examiner Purcell: I will let the answer stand. Now, if it is insufficient, you may go ahead and elicit the rest of the response that you expected to your original question; i.e., how his sales on table salt or blue package salt has stacked up for the same years.

Mr. McBride: Let me ask you a specific question, in order to get the picture, Mr. Johnson.

By Mr. McBride:

Q. In terms of dollar volume, did your total sales of 702 salt of all company brands and all kinds, decrease, increase, or remain approximately the same for the years in question, 1939 through 1941?

Mr. Haslett: I object to that, based upon the same ground, and strenuously force my objection to that type of question, and ask that the Examiner rule on it.

Trial Examiner Purcell: The objection is overruled. You may answer, Mr. Johnson. Read the question back to him, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I think they have increased.

By Mr. McBride:

Q. Now, with respect to tonnage volume, Mr. Johnson, the same question: Did your total tonnage of all kinds of salt of all types purchased from all salt companies, increase, decrease or remain approximately the same for the years in question, 1939 through 1941?

Mr. Haslett: I object to that, Mr. Examiner. This type of testimony is purely irrelevant, incompetent and immaterial at this stage of the proceedings.

Trial Examiner Purcell: We will go off the record.

Mr. Haslett: I would like for my position to be on the record, Mr. Examiner.

Trial Examiner Purcell: Let the record show that counsel requests that his position be on the record.

703 Mr. Haslett: The legal questions to be determined by the Commission in this proceeding is whether or not the effect of the discrimination price has substantially lessened competition, or has injured, destroyed, or prevented competition between various customers of this respondent in connection with the sale and distribution of salt, or whether or not it is intended to create a monopoly in the respondent or in any of the respondent's customers in the line of commerce in the various localities and trade areas where the respondent operates.

The fact that this man's business may have been increased in the general sale of salt is highly prejudicial to the Commission's case, where the Commission is interested only in the respondent and its customers, whether the respondent's customers have suffered injury as a result of these varying discounts on a quantity basis.

I would like for the Examiner to take into consideration the fact that we are not interested in this proceeding in the increase of business of the Jefferson Island or the Carey Salt Company, or any competitor of this respondent. We are interested only in the acts and practices of this respondent, and whether or not such acts and practices have injured, destroyed or prevented competition between the various customers as to the respondent's products, not as to any competitor's products.

704 Trial Examiner Purcell: Mr. Haslett, I can't permit you to go any further on the record.

Do you wish to be heard, Mr. McBride?

Mr. McBride: Only very briefly, Mr. Examiner.

I assume the implications of the answers to counsel for the Commission's questions are quite obvious, showing the decline in the witness' purchases of the blue can. I think I am permitted to show in defense of those implications that there may be a multitude of reasons, wholly aside from any discount or any policy of the respondent that may have caused the decline in the purchases of this company. It is entirely material, and I don't believe the respondent must be confined in its defense to one type of salt offered by it alone, and thus be at the mercy of the implication of the questions just used by Mr. Haslett.

Trial Examiner Purcell: I shall have to overrule the objection, as I did before, and state that if the fact as brought out on cross examination is, as Mr. Haslett states, highly prejudicial to the Commission's case, from my point of view, the Commission will have to shoulder that responsibility as best it may.

I think that the line of inquiry is very material to the rights of the respondent, and I am going to permit him to go on with it.

Mr. Haslett: Mr. Examiner, I give notice to the
704-A Examiner, to the respondent, and to the Commission through the record herein, that at the close of this proceeding, I shall move the Commission to overrule the Examiner's ruling in this proceeding and ask the Commission to direct reopening of testimony in this area in regards to this particular question.

Trial Examiner Purcell: Very well, sir.

705 Mr. McBride: Would you read the last question, Mr. Reporter?

(The question referred to was read by the reporter.)

The Witness: They have increased.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Johnson, I believe you have shown from your records that the business in the sale or the purchases of round package salt from the Morton Salt Company have decreased since the year 1939 in a substantial amount?

A. Yes, sir.

Q. Is that also true as to other types purchased from the Morton Salt Company?

A. I don't think that we have bought any salt other than the Morton salt from the Morton Salt Company in the last four or five years.

Q. You mean, blue package salt?

A. The blue package, yes.

Q. Can you state what would be some of the factors that have entered into the increase of your general salt business in the years 1939, 1940 and 1941?

A. We have sold a good deal of what we term sea salt.

Q. Will you explain what that is.

706 A. Well, we call it fish salt, in 100 pound sacks.

Q. Who do you purchase that salt from, sir?

A. Mostly from Jefferson Island Salt Company and Myles Salt Company.

Q. Have you ever purchased any of that grade of salt from the Morton Salt Company?

A. Not lately.

Q. Do you know the price which Morton charges for fish salt in 100 pound sacks?

A. No, sir, I don't know.

Q. Do you know whether or not Jefferson Island salt is cheaper in price than Morton salt?

A. I think they are all the same.

Q. Has the fish business in and around Tampa increased in the last several years, if you know?

A. I would imagine it has. We have had more inquiries and more sales for fish salt than we have had in previous years.

Q. Would you say that your business in the sale of fish salt has increased as a result for the demand for fish at this particular time?

A. Yes.

Q. Do you purchase any table salt from the Jefferson Island Salt Company?

A. Yes.

Q. What type of package is that in, sir?

707 A. They have one put up in a hexagon shaped box.

Q. A hexagon shaped box?

A. Yes, a red package.

Q. I see, and what price do you pay for that?

A. We pay $1.10.

Q. $1.10?

A. Yes, sir.

Q. Does Jefferson Island Company give you any discount on that?

A. No, sir.

Q. And you pay $1.50 for Morton's, and $1.10 for hexagon?

A. Yes.

Q. And what is the resale price of the hexagon product?

A. It goes to the trade for $1.35.

Q. Do you purchase any table salt from the International Salt Company?

A. I haven't lately, not in the last three or four years.

Q. What other salt company do you purchase table salt from, other than the Morton Salt Company and the Jefferson Island Salt Company?

A. Mostly the Myles Salt Company.
Q. What type of package do they offer you for resale?
A. They have the square package.
Q. And how much do you pay for a case of that type of salt?
708 A. The last we bought, we paid 65-cents for it.
Q. And is that salt sold in competition with Morton's round package salt?
A. No, sir.
Q. Is it a cheaper grade salt?
A. Yes, sir.
Q. Is it sold at 5-cents a package?
A. Yes.
Q. That is, to the consuming public?
A. Yes, sir.
Q. That is what they call in the trade "5-cent salt"?
A. Yes, sir.
Q. In answer to Mr. McBride's question that your business, the general salt business, has increased in the years 1939, 1940 and 1941, did you mean that the general sales of Morton's salt had increased during that period?
A. No, sir.
Q. In effect, they had decreased, hadn't they?
A. Decreased, yes.
Mr. Haslett: That is all.
Mr. McBride: No questions.
Mr. Haslett: You are excused, Mr. Johnson, thank you very much.
(Witness excused.)
Mr. Haslett: I will call Mr. J. S. Adams to the
709 stand.

J. S. ADAMS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, please, Mr. Adams?
A. J. S. Adams.
Q. And where do you reside, sir?
A. Tampa.
Q. Tampa, Florida?

A. Yes, sir.
Q. In what business are you engaged?
A. Wholesale grocery.
Q. And how long have you been in the wholesale grocery business?
A. Approximately 21 years.
Q. And with what company are you connected?
A. Adams-Kennedy Company.
Q. What position do you hold with that company?
A. Secretary-treasurer.
Q. Is it a corporation?
A. It is.
710 Q. And incorporated under the laws of what state, sir?
A. Florida.
Q. Has your company any branches?
A. No, sir.
Q. It has just one warehouse?
A. Yes, sir.
Q. And that is located in Tampa?
A. Yes.
Q. What is the business of the Adams-Kennedy Company?
A. Wholesale groceries.
Q. Do they sell groceries and allied products to the retail stores?
A. They do.
Q. Does your company have any competitors?
A. Yes, sir.
Q. Would you please name some of your competitors?
A. O'Berry & Hall Company, Bryan-Keefe Company, J. Q. Brantley Company, Economy Wholesale Grocery Company, Berger & Rachelson, Markey-Harmon Company, Pay & Take Wholesale Grocery—is that enough?
Q. I think that is sufficient. Does the C. D. Kenny Company operate in Tampa?
A. No, sir.
Q. Does your company purchase and handle salt?
A. They do.
711 Q. Does it purchase from the Morton Salt Company?
A. Yes.
Q. What type of salt does your company purchase from the Morton Salt Company?

A. Mostly the free running and iodized.

Q. What is the price at the present time that your company pays the Morton Salt Company for the blue label round package salt?

A. $1.50 a case.

Q. And has that price been in effect for a long time?

A. Several years.

Q. Does your company make purchases from the Morton Salt Company on a carload basis?

A. No, sir.

Q. Will you please state the method employed by your company in placing orders for the ultimate shipment of salt from the Morton Salt Company to your place of business?

A. I think, about once a month, or thereabout, they make a pool car and contact us for our requirements in that car.

Q. When you say "they," who do you mean?

A. Well, sometimes the broker, and sometimes the salesman, and sometimes both of them together.

Q. Representatives of the Morton Salt Company?

A. Representatives of the Morton Salt Company.

Q. What is the general sales price by your com-
712 pany for Morton's round package free running salt to the retail customers?

A. $1.80.

Q. $1.80 per case?

A. That is our listed price.

Q. And is that the same as to the iodized salt?

A. Yes, sir.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company upon the purchases made by your company from the Morton Salt Company?

A. They do not.

Q. Have they ever received any such discounts or allowances?

A. They never have.

Q. Do you receive any discounts or allowances on pool car purchases?

A. No, sir.

Q. You buy it on a carload basis, I mean, you get the $1.50 price?

A. We get the $1.50 price.

Q. Does your company buy any other type of salt from the Morton Salt Company other than the round package salt?

A. Very seldom, unless it is some special item.

Q. Approximately how much round package salt do you purchase a year?

713 A. From Morton?

Q. Yes.

A. In 1940, we purchased 775 cases.

Q. And have you the figures for 1939, sir?

A. In 1939, it was 675 cases.

Q. And in 1941, if you know, sir?

A. In 1941, 910 cases.

Q. So, your business has increased in the sale of table salt?

A. It has.

Q. Since 1939?

A. It has.

Q. Would your business be affected by the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price that you were offering to sell Morton's blue label salt?

A. It does make a difference.

Q. And it has an adverse effect upon your business?

A. It does.

Q. Is your business affected by the fact that some of your competitors pay $1.40 for a case of Morton's free running and Morton's iodized salt, while at the same time you pay $1.50 for the same type of salt?

A. I should think it would be.

714 Mr. McBride: Mr. Examiner, I object to that question and reserve the right of appeal, for reasons previously indicated.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. Will you re-answer that question?

A. I should think it would.

Q. And it would be an adverse effect?

A. Yes.

Q. Does Morton Salt Company do any specialty or missionary work for your company?

A. Not directly. They occasionally bring in what they call specialty orders.

Q. And that is from the retailers?

A. From the retailers.

Q. And the specialty work is done through the retailers, and not through the wholesalers?

A. That is correct.

Q. Do you know the prices at which some of your competitors are offering to sell Morton's round package free running salt to your customers?

A. $1.58.

Q. You pay $1.50 for it, I understand?

A. That is right.

Q. And some of your competitors are offering it 715 for sale at $1.58?

A. That is correct.

Q. Do you know the names of those competitors?

A. Economy Cash Wholesale Grocery and Pay & Take It Wholesale Grocery.

Q. Those two companies are offering it for $1.58 a case?

A. They are, sir.

Q. Have you any customers that you have sold to at $1.58 a case?

A. We have.

Q. Why did you sell to those customers at $1.58 a case?

A. We either had to meet that price or lose the salt business, and a nice grocery business at the same time.

Mr. McBride: Excuse me, I didn't hear the last part of his answer.

(The answer referred to was read by the reporter.)

By Mr. Haslett:

Q. You mean by that, that the fact a competitor was offering Morton's salt at $1.58, that would have effect on your other types of business, also?

A. Yes, sir.

Q. Could you explain that, please, why it would have an effect on your business?

A. Well, we have several customers that do a good sized volume, that pay cash, and they would just as 716 soon take their trucks and go down to the Cash & Carry and get their merchandise. We have other grocery items that the Cash & Carry do not carry in stock, that we can sell them and want to continue to sell them, but when they get a nice savings by going to Cash & Carry on several items, they will pick up their whole load at this

Cash & Carry grocery and cut us out of the sale of anything.

Q. The fact that a competitor of yours offers Morton's round package blue label salt at $1.58, affects your general business, as well as your salt business?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 83.

(The document referred to was marked "Commission's Exhibit 83" for identification.)

Mr. Haslett: Is it stipulated, Mr. McBride, that the document marked for identification as Commission's exhibit No. 83 is an invoice passing between the Morton Salt Company of Chicago, Illinois, and the Adams-Kennedy Company of Tampa, Florida, numbered 47298, under date of November 29, 1939?

Mr. McBride: Yes, that is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

717 Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence as Commission's exhibit No. 83.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 83" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 84.

(The document referred to was marked "Commission's Exhibit 84" for identification.)

Mr. Haslett: Mr. McBride, may we have the same stipulation as to Commission's exhibit for identification 84, being an invoice of Morton Salt Company, numbered 20472, under date of December 28, 1940, of commodities sold to the Adams-Kennedy Company, Tampa, Florida?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence as Commission's exhibit No. 84.

718 (The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 84" was received in evidence.)

Mr. Haslett: I hand you another document, Mr. Reporter, and ask that you mark it for identification as Commission's exhibit No. 85.

(The document referred to was marked "Commission's Exhibit 85" for identification.)

Mr. Haslett: May we have the same stipulation, Mr. McBride, as to Commission's exhibit No. 85, being an invoice of the Morton Salt Company numbered 74428, under date of October 20, 1941, of commodities sold to the Adams-Kennedy Company, Tampa, Florida?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence as Commission's exhibit No. 85.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 85" was received in evidence.)

Mr. Haslett: Mr. Examiner, in offering Commission's exhibit Nos. 83, 84 and 85, I offer them as to the typed
719 and printed context of the document, and not any penciled notations that may appear thereon.

Trial Examiner Purcell: They are so received.

By Mr. Haslett:

Q. Have you always had the general price of $1.80 for the resale of Morton's round package free running salt to your customers?

A. Yes, sir.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. Mr. Adams, you just stated, I believe, that your list price to your customers on Morton's free running and Morton's iodized was $1.80 a case?

A. That is correct.

Q. If a competitor of yours was offering the same salt at $1.80 a case to the trade, that would not have any adverse effect on your business, would it?

A. It would not.

Q. In fact, it might be helpful to your business, might it not?

A. Yes.

Q. I am referring in both of the last questions to the salt business specifically.

A. Yes, sir.

720 Q. And more specifically to the Morton blue can. You understood the question?

A. I did.

Q. And if a competitor of yours was offering salt of the type just referred to at $1.80 a case, and your list price was $1.80 a case, that would not have an adverse effect on your business?

A. No, sir.

Q. So that actually it is true, is it not, Mr. Adams, that the determining factor, so far as any adverse effect on your business is concerned, is this price at which it is offered to the customers in the area in which your company operates, isn't that right?

A. You are speaking of our price to the retail trade?

Q. Your price to the retail trade, yes.

A. Yes.

Q. So that if a competitor of yours should purchase a carton of Morton's blue can salt, either free running or iodized, at $1.40, whereas at the same time, you might be paying $1.50, but the person paying $1.40 or the competitor paying $1.40, offered the salt to the retail trade at $1.80, the same price that you were offering it at, your business would not be adversely affected, wuold it?

A. He is in a position to cut that price.

Mr. McBride: I ask that the answer be stricken.

721 It wasn't responsive to the question.

Mr. Haslett: I think the answer is very responsive to the question.

Mr. McBride: May I present my position? I am not asking him what he might do, I am asking him what would be the effect on the witness' business if the facts occurred as I described them in my question to the wintess. I want that question answered, and not what might be done.

Trial Examiner Purcell: Read the answer, Mr. Reporter.

(The answer referred to was read by the reporter.)

Mr. McBride: I am asking the witness a specific ques-

tion, I am not asking for what might happen. I have given the witness the facts upon which I want his answer predicated.

Trial Examiner Purcell: He may answer "yes" or "no," as the case may be, and then give his reason for it, qualify his answer.

Mr. McBride: I didn't ask for the witness' reasons, I merely want his answer to that question.

The Witness: I still think it would affect us adversely.

By Mr. McBride:

Q. But you just told me, Mr. Adams, that as long as the price of your competitor to the retail trade was
722 $1.80, that your business wasn't adversely affected, if that was the price you were offering it to the retail trade?

A. If he continued to offer it to the retail trade at the higher price or the same price, we would not be adversely affected.

Q. Regardless of what he paid for it?

A. Yes.

Q. Now, Mr. Adams, it is a custom, is it not, in the wholesale business, from time to time, for various houses to select a nationally advertised product and offer it as what they call a loss leader, in order to get business on which there is a longer margin of profit?

A. You are speaking of wholesalers?

Q. Wholesale groceries, in offering loss leaders to their retail trade?

A. I can't answer that, we do not.

Q. You have heard of that practice, though, have you not?

A. In retail trade, not in the wholesale.

Q. Not in the wholesale?

A. No, sir.

Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. What general effect would it be upon your business if a competitor were purchasing all of its products at
723 10 cents less than you were purchasing yours?

Mr. McBride: If the Examiner please, I object to that, referring to an over-all 10 cents, or 10 per cent, I

am not sure how counsel stated it, on all commodities. We are here concerned only with Morton Salt Company and its products, as I understand the complaint.

Mr. Haslett: Well, Mr. Examiner, counsel is receding from his former position. He took the position in the cross-examination of the last witness that he was concerned with the salt industry. Now he is concerned only with the Morton Salt Company's products.

Trial Examiner Purcell: No, I think his position may be distinguished in the two cases. In the preceding case, he confined himself to salt, as such, Morton's, as well as others, but now here you are attempting within the narrow confines of this case, which involves salt, to undertake an inquiry into the witness' handling of his entire business. I sustained an objection to the same thing before, and I am going to do it again.

By Mr. Haslett:

Q. Mr. Witness, did you mean to give the Commission the impression in your answer to Mr. McBride's question that if a competitor was paying $1.40 and selling at $1.80, that is a 40-cent differential in price, and you were paying $1.50 and were selling it at $1.80, that is a 30-cent
724 differential in price, that that would in no way affect your business?

Mr. McBride: If the Examiner please, I object to that. The question has been asked and answered.

Mr. Haslett: It has not been asked and answered.

Trial Examiner Purcell: Not by the present interrogator, sir.

Mr. Haslett: No, sir.

Mr. McBride: You mean, then, that if the same question which I placed to the witness is repeated by counsel, then we will go over it again?

Trial Examiner Purcell: No, Mr. McBride, you brought it out on your cross-examination, and I say that on redirect, Mr. Haslett is entitled to inquire into that and explain it away, if he can.

Mr. McBride: I think that is true, but I am objecting to the placing of the same question to the witness. I am not objecting to him attempting to open the inquiry, collaterally or otherwise on that point. I think the Examiner will note that he has asked precisely the question that I have asked, and have had answered.

Trial Examiner Purcell: If he wants to take the chance on getting the same answers to the questions you elicited, the witness may answer. I am going to let you pursue your course of inquiry.

Mr. Haslett: Read the question, Mr. Reporter.

725 (The question referred to was read by the reporter.)

The Witness: No, I didn't intend to give him that impression. I think he brought those two points out in two separate questions to me. He asked if the price to the retail trade of a competitor was the same or higher than mine, would I be at a disadvantage, and I told him that as far as the sales to the retailer, I would not be, and then I later said that if a competitor bought merchandise at a cheaper price, then he would be in a position to reduce his price or cut our price to the retail trade.

Mr. McBride: Now, if the Examiner please, I shall ask that the last sentence be stricken as not responsive to the question.

Trial Examiner Purcell: Let me hear the last sentence, Mr. Reporter.

(The answer referred to was read by the reporter.)

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. Let the answer stand, objection overruled.

By Mr. Haslett:

Q. Am I correct when I state that it is your position that your business would be adversely affected by the fact that a competitor of yours was paying $1.40 for the

726 same article or type of article that you were paying $1.50 for?

A. Certainly.

Mr. McBride: My usual objection and reservation, Mr. Examiner.

Trial Examiner Purcell: Granted.

Mr. Haslett: I think that is all.

Mr. McBride: No further questions.

(Witness excused.)

Trial Examiner Purcell: Recess for five minutes.

(A short recess was taken.)

Trial Examiner Purcell: We will resume.

Mr. Haslett: Mr. Walter H. Berg.

WALTER H. BERG was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Berg?
A. Walter H. Berg.
Q. And where do you reside?
A. In Tampa.
Q. Tampa, Florida?
727 A. That is right.
Q. In what business are you engaged, sir?
A. Wholesale grocery business.
Q. And how long have you been engaged in the wholesale grocery business?
A. About 20 years.
Q. And what company are you associated with?
A. O'Berry & Hall.
Q. And where are they located, sir?
A. They are located in Tampa, Florida.
Q. And what position do you hold with that company?
A. Assistant secretary and credit manager.
Q. Is O'Berry & Hall a corporation?
A. Yes.
Q. Incorporated under the laws of what state, sir?
A. Florida.
Q. Has it any branches?
A. Yes.
Q. Where are they located?
A. One in Orlando and one in Fort Pierce.
Q. And is all purchasing done for all branches here in the Tampa office?
A. Yes, sir.
Q. And the principal office and place of business is here in Tampa?
728 A. In Tampa.
Q. What is the business of the O'Berry & Hall Company?
A. Selling groceries wholesale.
Q. To the retail stores?
A. To the retail trade, yes.

Q. Does your company have any competitors?

A. Yes.

Q. Would you name a few of them?

A. Adams-Kennedy, Bryan-Keefe Company, Markey-Harmon, J. Q. Brantley, Economy Wholesale Grocery, Pay & Take Wholesale Grocery Company.

Q. Is Tropical Wholesale Grocery one of your competitors?

A. They are competitors of ours on the West Coast.

Q. Now, when you say the "West Coast," do you mean St. Petersburg?

A. St. Petersburg, Clearwater and Tarpon Springs.

Q. Does your company purchase or handle and sell salt?

A. Yes, sir.

Q. And does it purchase from the Morton Salt Company?

A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Mostly their free running and iodized salt.

Q. Do you know what the price is at the present time that your company pays for Morton's blue label round package salt?

729 A. It is approximately $1.50.

Q. Per case?

A. That is right.

Q. And the same thing for iodized salt?

A. That is right.

Q. Do you know how long that price has been in effect?

A. I couldn't tell you definitely, but I think it is more than a year.

Q. For the past several years?

A. That is right.

Q. Does your company make purchases from the Morton Salt Company on a carload basis?

A. No, sir.

Q. Will you state the method used by your company in placing orders for the ultimate shipment of salt from Morton Salt Company to your company?

A. Most of the orders are solicited by their salesmen.

Q. And will you develop that a little more, please, sir?

A. Well, I think, I am not positive about that, but I think that all of the salt moves in here in pool cars. When

the car is ready for shipment, or their salesman thinks he has a carload lined up, he comes around and needs a few hundred cases to complete the car, he comes around to our place of business and solicits our orders for our portion of the car.

Q. And is this salesman a broker of the Morton
730 Salt Company or a salesman of the Morton Salt Company?

A. A salesman.

Q. Do you know what the general sales price by your company for Morton's salt, round package, free running, is to your retailer customers?

A. It is $1.75.

Q. $1.75?

A. That is right.

Q. Per case?

A. That is right.

Q. Is that the same price for the iodized salt?

A. That is right.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company upon the purchases made by your company from the Morton Salt Company?

A. No, sir.

Q. Has it ever received any allowances from them?

A. No.

Q. And no discounts?

A. No, sir.

Q. Does it receive any discount on the pool carload purchases?

A. No, sir.

Q. Approximately how many cases of salt does your company purchase per year from the Morton Salt Company?

731 A. Approximately 2000 cases.

Q. Per year?

A. Yes, sir.

Q. Would the business of your company be affected by the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a cent differential in price under the price that you were offering to sell Morton's blue label salt?

A. Yes.

Q. And is your business affected by the fact that some

of your competitors pay $1.40 for a case of Morton's free running and iodized salt, while at the same time your company pays $1.50 for the same type of salt?

A. Yes, sir.

Mr. McBride: Mr. Examiner, I make my objection to that question.

Trial Examiner Purcell: Same ruling, exception reserved.

By Mr. Haslett:

Q. Does your company sell any salt outside of the state of Florida?

A. No, sir.

Q. Does your company do any advertising of any type from the Morton Salt Company?

A. No, sir.

732 Q. Has your company been offered by the Morton Salt Company a specialty program to promote the sale of Morton salt?

A. That is something I couldn't answer, because I am not the buyer. I am not approached by the salesman.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 86.

(The document referred to was marked "Commission's Exhibit 86" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated by and between counsel for the Commission and counsel for the respondent that the document marked for identification as Commission's exhibit No. 86 is a true and correct invoice of the Morton Salt Company, numbered 76006, under date of October 27, 1941, of commodities sold to O'Berry & Hall Company?

Mr. McBride: Yes, that is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence as Commission's exhibit No. 86.

(The document referred to, heretofore marked for identification "COMMISSION EXHIBIT 86" was received in evidence.)

733 Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated between counsel for the Com-

mission and counsel for the respondent that Commission's exhibit No. 83 is typical of the invoices passing between the Morton Salt Company and Adams-Kennedy Company for Morton's iodized salt?

Mr. McBride: That is correct.

Mr. Haslett: And that Commission's exhibit No. 84 is typical of invoices passing between the Morton Salt Company and Adams-Kennedy Company for Morton's free running and Morton's iodized salt?

Mr. McBride: That is correct.

Mr. Haslett: And that Commission's exhibit No. 85 is typical of invoices passing between Morton Salt Company and the Adams-Kennedy Company for Morton's ice cream salt, Morton's free running salt and Morton's iodized salt?

Mr. McBride: That is correct, when those items are ordered together.

Mr. Haslett: And that Commission's exhibit No. 86 is typical of the invoices passing between the Morton Salt Company and O'Berry & Hall Company of Tampa, Florida, for Morton's free running and Morton's iodized salt?

Mr. McBride: That is correct.

Mr. Haslett: I would like for the record to be very clear on this matter, Mr. Examiner, that the document 734 marked and in evidence as Commission's exhibit No. 86, is offered with the typewritten and printed matter contained thereon, and not any penciled written notations.

Trial Examiner Purcell: It is so noted.

Mr. Haslett: That is all, your witness, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Just one or two questions, Mr. Berg. What are your duties in connection with the company with which you are associated?

A. I have charge of the office, the office work, the office detail and credits, that is all.

Q. You have nothing to do with the buying end or the buying policy of the company?

A. No, sir.

Q. You have nothing to do with the merchandising phase of the company's business?

A. With the merchandising policy?

Q. That is right.

A. Not directly, no.

Q. You yourself do not solicit orders for the company, or have any outside contact with the trade as a salesman or as a merchandiser for your company, is that correct?

A. No, sir.

735 Q. Have you ever had that experience or those duties with that company?

A. Yes, sir.

Q. How long ago was that?

A. Seven years ago, seven or eight years ago.

Q. Seven or eight years ago?

A. Yes, sir.

Q. During those seven or eight intervening years, you have been confined to the duties that you first described, is that correct?

A. That is correct.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Berg, are the books, records and files of the O'Berry & Hall Company under your supervision?

A. Yes.

Q. And they are kept under your supervision?

A. That is right.

Q. And do you authorize the payment of all accounts, I mean, does that come under your control?

A. Yes.

Q. When you actively engaged in the selling of products to the retailers, did you solicit orders for the sale of Morton's salt?

736 A. Yes, sir.

Q. And what were your general duties at that time, were you a salesman?

A. I was a part-time salesman, and I had charge of our branch warehouse in Orlando, and I filled in there several days taking orders for the retail trade.

Q. But the branch warehouse at Orlando was looking to your general supervision?

A. That is right.

Q. And as manager of that, the policies and operations of that branch were controlled by you?

A. That is right.

Mr. Haslett: I think that is all.

Mr. McBride: I have no further questions.

Mr. Haslett: Thank you very much, Mr. Berg.

(Witness excused.)

Mr. McBride: Mr. Examiner, may I make my usual request for the withdrawal of Commission's exhibits numbers 81-A to 86, inclusive, to be photostated, and the originals thereafter to be returned to the record?

Trial Examiner Purcell: Granted.

737 Mr. Haslett: I will call Mr. Bever to the stand.

CHARLES CONWAY BEVER was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Haslett:

Q. Will you kindly state your full name for the record?

A. Charles Conway Bever.

Q. Where do you reside, Mr. Bever?

A. My residence?

Q. Yes, do you reside in Tampa, Florida?

A. Yes, sir.

Q. And in what business are you engaged?

A. The grocery business.

Q. How long have you been in the grocery business?

A. Sixteen years.

Q. With what company are you associated?

A. B & B Cash Grocery Stores, Inc.

Q. And you say it is a corporation?

738 A. Yes, sir.

Q. Incorporated under the laws of what state, sir?

A. Florida.

Q. What is the business of the B & B Cash Grocery Stores?

A. Operating retail stores and a wholesale business.

Q. Do you sell at both wholesale and retail?

A. Yes.

Q. Have you any branches in the wholesale line?

A. No, sir.

Q. Through your retail outlets you sell groceries and allied products direct to the consuming public?

A. Correct.

Q. Through your wholesale outlets you sell groceries and allied products to the retail stores?

A. Yes, sir.

Q. Now, confining this question to the wholesale end of your business, have you any competitors in the wholesale line?

A. Yes, sir.

Q. Would you name some of those, please?

A. Economy Cash & Carry Wholesale Grocery.

Q. Is that in Tampa?

A. Tampa. And Bryan-Keefe, operating as Fargo Cash & Carry Wholesale Grocery; in fact, every one in town is a competitor in the wholesale business.

739 Q. Would O'Berry & Hall be your competitors?

A. Yes, sir.

Q. And Adams-Kennedy, would they be your competitors?

A. Yes.

Q. J. Q. Brantley Company?

A. Yes.

Q. And Tropical Grocery Company of St. Petersburg, Florida?

A. Yes.

Q. Do you sell over in St. Petersburg?

A. Yes.

Q. Did the Hill Brothers of Miami ever operate a branch in Tampa?

A. Not that I know of.

Q. Do they operate close by Tampa?

A. No, not as I know of.

Q. Does your company handle or sell salt?

A. Yes.

Q. Does it purchase from the Morton Salt Company?

A. Yes.

Q. And is the salt purchased from the Morton Salt Company sold in your retail outlets direct to the consuming public?

A. It is.

Q. And is it also sold at wholesale to your retailer customers?

A. Yes, sir.

740 Q. What type of salt does your company purchase from the Morton Salt Company?

A. The round packages and square packages; in fact, we have purchased at different times all of the kinds of salt that we handle from Morton.

Q. You purchase the round package blue label salt?
A. Yes, sir.
Q. Free running?
A. Yes, sir.
Q. And the iodized salt, also?
A. And iodized, also, yes, sir.
Q. And you purchase Kleer salt?
A. Yes, sir.
Q. And you purchase various other types of salt in bulk, that is, in 100 pound bags, from the Morton Salt Company?
A. Yes, sir.
Q. Do you know what the price is at the present time that your company pays for Morton's round package free running salt?
A. I do.
Q. What is that price?
A. $1.50 net.
Q. And is it the same price for the Morton's round package iodized salt?
A. Yes.
741 Q. Do you know how long the $1.50 price has been in effect?
A. No.
Q. Has it been in effect for a long time?
A. As long as I can remember.
Q. Would you say that was a long time?
A. That is right.
Mr. Haslett: I think it is agreed it has been in effect for the past several years, is that not true, Mr. McBride?
Mr. McBride: That is right.

By Mr. Haslett:

Q. Do you make purchases from the Morton Salt Company on a carload basis?
A. No.
Q. What method is employed by your company in placing orders for shipments of salt from the Morton Salt Company direct to your company?
A. We place the order with the broker and it comes in a pool car shipment.
Q. Do you pay the carload price?
A. Yes.
Q. Does your company haul the salt from the siding where the car is located to your warehouse?

A. Yes, sir.

Q. What is the general wholesale price charged by your company for Morton's round package free running salt to your retailer customers?

742 A. $1.58 a case.

Q. And is that the same price on the iodized salt?

A. Yes.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company for the purchases made by your company from the Morton Salt Company?

A. Repeat that, please.

(The question referred to was read by the reporter.)

The Witness: No.

By Mr. Haslett:

Q. Has it ever received any discounts or allowances from the Morton Salt Company?

A. Are you referring to the round package?

Q. That is right, sir.

A. No, sir.

Q. Does your company receive a discount on a carload basis, where the orders are shipped in what you referred to as pool cars?

A. Yes, we receive the carload price.

Q. Would your business be in any way affected by the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price you were offering

743 to sell Morton's blue label salt?

A. Yes.

Q. Would it be affected if one of your competitors offered to sell Morton's round package sale at $1.50 per case to your customers?

A. Yes, we would lose the business, probably.

Q. Is your business in any way affected by the fact that some of your competitors pay $1.40 for a case of Morton's free running and iodized salt, while at the same time you pay $1.50 for the same type of salt?

A. Yes, sir.

Mr. McBride: Mr. Examiner, my objection as usual to that question.

Trial Examiner Purcell: Yes.

Mr. McBride: And the usual reservation.

By Mr. Haslett:

Q. You say "yes, it would be affected"?

A. Yes.

Q. Would that be adversely affected?

A. Yes.

Q. Does the Morton Salt Company, through its salesmen, do any specialty or missionary work in connection with the resale of Morton's salt through your wholly-owned retail stores to the consuming public?

A. Yes, they have.

744 Q. They have?

A. Yes, sir.

Q. And what type of special work is that, sir? What was done by the Morton Salt Company?

A. They made floor displays and held floor sales, and have offered at different times premiums with the sale of two or more packages.

Q. What type of premiums, was it another package of salt, or some other article?

A. It was another article, such as baloons and, I would say maybe a wooden popgun.

Q. Little trinkets of some sort?

A. That is right.

Q. Did Morton Salt Company pay you for that privilege of promoting the sale of its products through your retail stores?

A. No.

Q. You named some of your competitors in the wholesale line. Will you name some of your competitors in the retail line, that is, selling in competition with your wholly-owned retail stores?

A. A&P Tea Company, Table Supply Stores.

Q. When you say Table Supply Stores, do you know the name of the company that owns that, sir? Is it the Winn-Lovett Company, if you know, sir? If you don't know, I don't want you to answer.

745 A. No, I don't know.

Q. Name some other competitors?

A. Margaret Ann Stores, All-American Stores.

Q. Are they Acme Markets, or American Stores?

A. They are listed as All-American, Lakeland Grocery Company owns them.

Q. That is, "All-American Stores"?

A. Yes. Do you want more than that?

Q. Yes, if you will, if you have some others.

A. Do you want chain stores, or—

Q. Chain stores, yes. Does the Kroger Company operate any stores here, Kroger Wholesale Grocery Company?

A. No, sir.

Q. The American Stores, Inc., of Philadelphia, Pennsylvania, do they operate here?

A. No, sir.

Q. Safeway Stores?

A. No.

Q. In addition to the competitors whom you have just named, there are a number of retailer independently owned stores that operate in the city of Tampa that sell in competition with your retail stores, is that correct?

A. Yes.

Q. Do you know approximately how many stores of that type are in the Tampa area?

746 A. No, I don't.

Q. Is there a large number?

A. A small number.

Q. Approximately how many cases of Morton's free running salt do you purchase a year, sir, if you know?

A. Approximately 1300.

Q. And those cases are sold both at wholesale and retail, the contents of those cases are sold both at wholesale and retail?

A. They are.

Q. Did you bring with you at my request some invoices from the Morton Salt Company?

A. I did.

Q. May I have them, please?

A. Yes.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that you mark it for identification as Commission's exhibit No. 87.

(The document referred to was marked "Commission's Exhibit 87" for identification.)

Mr. Haslett: Mr. McBride, is it stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commossion's Exhibit No. 87 is an invoice of Morton Salt Company, numbered 74,444, under date of October 20, 1941, representing commodities sold to the B & B Cash
747 Grocery Stores, Inc., Tampa, Florida?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Trial Examiner Purcell: Is there any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked Commission's Exhibit No. 87.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 87" was received in evidence.)

Mr. Haslett: Is it also stipulated, Mr. McBride, that the document marked as Commission's Exhibit 87 is typical of invoices passing between the Morton Salt Company and the B & B Cach Grocery Stores, Inc., of Tampa, Florida, for Morton's free running and Morton's iodized salt?

Mr. McBride: That is correct.

By Mr. Haslett:

Q. Does your company designate any particular name for its wholesale branch of the B & B Grocery Company?

A. Yes, sir.

Q. What is that name, sir?

A. Pay & Take Wholesale Grocery.

Q. And has that name any particular significance, I mean, is it a cash and carry basis, or do you deliver
748 your products?

A. It is a cash and carry.

Q. Do you have any trucks where your products are delivered to your retail customers, other than your wholly-owned retail stores?

A. Yes, sir.

Q. You do some delivery, also?

A. Yes.

Q. Would the price on those commodities vary where you make those deliveries?

A. Yes.

Q. What is the resale price of Morton's salt where the products is delivered to the retailer?

A. $1.57.

Q. And the price when they come and get it, or come to your wholesale grocery house and pay for it, and transport it from the wholesale grocery house to their particular place of business, is what price?

A. $1.58.

Q. Do you mean to say that the price is less when you have delivered it?

A. We have certain arrangements with different corporations, where we charge them a set overage, percentage over cost.

Q. Will you explain that a little bit for us, please, sir, so that the record may be clear?

749 A. We have other corporations, I will say I have another corporation, and I deliver it to my corporation that I am president and hold the controlling stock in, at a set price over cost.

Q. I see. Then, have you any other customers other than the customers whom you have some interest in, that buy salt and have the salt delivered to their particular place of business?

A. No, we don't deliver any.

Q. Then, the only customer where you deliver the salt, is your customer which you have some particular interest in, through some stock connection or directorate connection?

A. Yes, sir.

Q. I believe you stated that to all other customers you resell salt at $1.58 a case, that is, Morton's plain or iodized salt?

A. Yes, sir.

Q. Why do you sell it at $1.58 a case?

A. That is the competitive price quoted by our competitors.

Q. What competitors?

A. Economy Cash & Carry Wholesale Grocery, and Fargo Cash & Carry Wholesale Grocery.

Q. Is that a branch of Bryan-Keefe?

A. It is.

Q. Any other competitors who offer it at $1.58 a case?

750 A. I don't remember their prices.

Q. Why did you set your price at $1.58?

A. Well, in order to sell any salt.

Mr. Haslett: I think that is all, your witness, Mr. McBride.

Mr. McBride: No cross-examination.

Mr. Haslett: That is all, thank you very much.

(Witness excused.)

Mr. Haslett: Come around, Mr. Muniz.

A. MUNIZ, JR. was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your name for the record?
A. A. Muniz, Jr.
Q. Where do you reside, Mr. Muniz?
A. I reside at 3816 Horatio Street, Tampa.
Q. Tampa, Florida?
A. Tampa, Florida.
Q. In what business are you engaged?
A. I am employed by the Economy Wholesale Grocery Company.
Q. And how long have you been employed by the Economy Wholesale Grocery Company?
751 A. About ten years.
Q. And what position do you hold with that company?
A. I am warehouse superintendent, and do most of the buying for the Tampa branch.
Q. And what is the Economy Wholesale Grocery Company?
A. Well, it is a corporation organized to engage in the grocery business, wholesale.
Q. And it was organized under the laws of what state?
A. The state of Florida.
Q. And you say it is engaged in the business of selling groceries and allied products at wholesale?
A. It is, yes, sir.
Q. And you sell to the retailer customers?
A. That is correct.
Q. I believe you stated that the Economy Wholesale Grocery Company has a branch?
A. Well, the Tampa division is a branch of the head Miami headquarters; Miami is considered the headquarters.
Q. Has it any other branches throughout the state?
A. Yes, we operate what we call Cash & Carry branches at several points in the state.
Q. Could you name those points?
A. Well, we operate a branch at West Palm Beach, St. Petersburg, Lakeland, Orlando, Ocala, and Daytona Beach. We also have a branch in Jacksonville.

752 Q. And do you do the buying for all of the branches except the Miami branch?

A. I do the buying for what we call the Tampa warehouse. The Miami warehouse buys for that particular district.

Q. There are only two warehouses?

A. Two main warehouses.

Q. One located in Miami and one in Tampa?

A. That is correct.

Q. And what branches are served from the Tampa warehouse?

A. Well, from the Tampa warehouse, we serve St. Petersburg, Lakeland, Orlando, Ocala and Daytona.

Q. Does the Economy Wholesale Grocery in Tampa have any competitors?

A. Yes, plenty.

Q. Will you name a few of them for us, please, sir?

A. Well, we have Adams-Kennedy, O'Berry & Hall, Bryan-Keefe & Company, and then we have B&B Cash Grocery Company, that operate the Pay & Take Cash and Carry, and Berger & Rachelson, and then there are several out in the Latin Section in Ybor City, Harold Vilthes, Candileri, Reina Brothers & Company, Spoto & Company, and I think that is about all I can think of at present, that is, in the immediate vicinity of Tampa. We have some competitors outside of Tampa.

Q. But in all the areas where you have branches,
753 you also have competitors?

A. Yes, in every town where we have a branch, we have competitors.

Q. Does your company have any retail owned stores affiliated with it?

A. Well, the corporation does not own any retail stores.

Q. Does your company handle and sell salt?

A. Yes, sir.

Q. And does it purchase from the Morton Salt Company?

A. Yes.

Q. Your company is a customer of Morton Salt Company?

A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Well, we purchase their round package, which is an

advertised product, and we purchase their ice cream package, and also at times we have purchased bulk salt from them.

Q. When you say the round package, you mean the blue label salt?

A. Yes, and also at times we have purchased what is known in the trade as the square package, one and one-half pound, square.

Q. Is that sold at 5 cents each, retail, is that what they call the 5-cent salt?

A. That is what they call the 5-cent package, but
754 it isn't being sold for 5 cents.

Q. What is the price that your company pays for the blue label round package salt, to the Morton Salt Company?

A. We are paying them $1.50 per case.

Q. And how long has that price been in effect, if you know, sir?

A. Well, it has been in effect as far back as I can remember, as long as I have had anything to do with the salt business.

Q. It has been in effect for a long time?

A. Yes, sir.

Q. Does your company make purchases from the Morton Salt Company on a carload basis?

A. We have bought carloads of salt from them, but at the present time we are buying in what they call pool cars.

Q. And how are orders placed by your company for its products that are purchased from the Morton Salt Company?

A. We place them with their representative, Mr. Ballenger, or with their broker, the Tampa Brokerage Corporation.

Q. As a result of which, salt is shipped to you in cars loaded with salt that is also shipped to your competitors, is that true?

A. I think so, because a pool car consists of several buyers.

Q. What is the general sales price by your company
755 for Morton's round package free running salt to your retailer customers?

A. In the city of Tampa, we sell it for $1.58 a case.

Q. Is that also true of iodized salt?

A. Yes.

Q. And do you have any other price for it outside of the city of Tampa?

A. Well, I think there is a differential, but I could not find a list, so I don't know exactly what it is.

Q. You don't know what the prices are outside of Tampa?

A. No, sir, I wouldn't swear to the correct price today.

Q. Does your company receive any discounts or allowances of any kind from Morton Salt Company upon the purchases made by your company from the Morton Salt Company?

A. Well, if we purchase over 5,000 cases in a year's time, we receive a rebate.

Q. I see, of how much?

A. It amounts to 10 cents per case.

Q. And does the branch of the Economy Wholesale Grocery Company located in Tampa purchase 5,000 cases of Morton's free running salt a year?

A. The branch located at Tampa does not purchase that quantity; it is all branches together that purchase that quantity.

Q. It is the combined purchase of all of the branches 756 of the Economy Wholesale Grocery Company?

A. That is correct.

Q. That purchases in excess of 5,000 cases of salt per year?

A. That is correct.

Q. And when I say "per year", I don't mean on the calendar basis, I mean during a 12 consecutive months' period. I mean, it doesn't have to run from January to January, does it?

A. Yes, I believe it runs from January to January, that is a calendar year.

Q. I see, and how is that paid to you? You said it was in the form of rebates, is that paid at the end of a 12 months period?

A. Yes.

Q. In the form of a check?

A. I suppose it is a check, it has to come that way.

Q. Would any single branch of the Economy Wholesale Grocery Company purchase 5,000 cases of free running salt per year from Morton Salt Company?

A. Not one single branch.

Q. Does your company get any other discounts or allow-

ances from the Morton Salt Company other than the 10 cents per case on Morton's free running salt?

A. Not to my knowledge.

Q. Would your business in any way be affected by
757 the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price that you were charging, or offering to sell the Morton blue label salt?

A. It would over a period of time, yes.

Q. If one of your competitors offered to sell Morton's salt at $1.40 a case to the retailers, would that in any way affect your business?

A. Well, it would affect it, but we would probably meet it. That is the grocery business.

Trial Examiner Purcell: What was the last question, $1.40?

Mr. Haslett: Yes, that is the price he pays for it.

By Mr. Haslett:

Q. When the shipment of salt arrives on the siding here in Tampa from the Morton Salt Company in what you have referred to as a pool car, does your company send its own trucks to the siding and haul the salt back to the warehouse?

A. Yes.

Q. The Morton Salt Company does not furnish that type of transportation for your purchases, does it?

A. In pool cars, it does not, but if we should buy a straight car and it was shipped by rail instead of water, it could be placed at our siding.

Q. It could be placed at your siding?

758 A. Yes.

Q. But has it ever occurred where a pool car has been placed at your siding?

A. No.

Q. Where are the pool cars placed, what siding?

A. The pool cars up to the present have been coming in by water, and they have been distributed from the docks.

Q. I see.

A. Lately they have been coming over the Pan-Atlantic Steamship Corporation, or the Coast Transportation Company, of which both have dock facilities here.

Q. The discount that you referred to that you receive on round-package blue label free running and iodized salt, does it appear upon the face of the invoice?

A. No, sir.

Q. The invoice shows what price?

A. $1.50 a case.

Mr. Haslett: I think that is all, your witness, Mr. McBride.

Trial Examiner Purcell: Approximately how many cases of salt are there to a carload?

The Witness: There is approximately 1,000 cases. Well, a car consists of 60,000 pounds, and most cases weigh 60 pounds, and, of course, if a case only weighed 40 pounds, it would take 1500 cases.

759 Trial Examiner Purcell: Assuming that the bulk was the same?

The Witness: That is right.

Trial Examiner Purcell: Or proportionatelly less, rather?

The Witness: That is right.

By Mr. Haslett:

Q. It is a very heavy product, isn't it?

A. Yes, sir.

Q. Freight on it runs a great deal?

A. Yes, the freight usually governs the price.

Q. Do you pay the freight on this end, or is the freight prepaid from the Morton Salt Company?

A. Whenever we bought straight cars, we would pay the freight at this end. Whenever they are shipped in pool cars, naturally they apparently prepay the freight, because we would not pay freight at this end.

Q. When you pay the freight at this end, you deduct the freight from the invoice price?

A. Oh, yes, that has to be deducted from the invoice, because, naturally, it figures in the cost.

Mr. Haslett: That is all.

Trial Examiner Purcell: Any cross?

Mr. McBride: No questions.

Trial Examiner Purcell: All right, that is all.

761 BEFORE THE FEDERAL TRADE COMMISSION.

• • (Caption—4319) • •

Room 309,
U. S. Post Office Building,
Tampa, Florida,
Thursday, April 30, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

762 Mr. Haslett: I will call as a witness for the Commission, Mr. Keefe.

EDWARD J. KEEFE was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Keefe?

A. Edward J. Keefe.

Q. And where do you reside, Mr. Keefe?

A. Tampa, Florida.

Q. And in what business are you engaged?

A. Wholesale grocery business.

763 Q. How long have you been in the wholesale grocery business?

A. Thirty-nine years.

Q. And with what company are you connected?

A. At present, Bryan-Keefe & Company.

Q. Is that a corporation, sir?
A. Yes, sir.
Q. And under the laws of what state was it incorporated?
A. The state of Florida.
Q. And what position do you hold with that company?
A. President.
Q. And what is the business of the Bryan-Keefe Company?
A. Wholesale groceries.
Q. They sell groceries and allied products to the retailer stores?
A. Yes, and restaurants and hotels.
Q. And restaurants and hotels?
A. Yes.
Q. Does the Bryan-Keefe Company have any competitors?
A. Yes, sir.
Q. Would you name a few of them for us?
A. Adams-Kennedy Company.
Q. Is that in Tampa?
A. Yes.
Q. All of these are in Tampa?
764 A. Yes, O'Berry & Hall Company of Tampa, Cumberland & Liberty Mills, Markey-Harmon Company, Reina Brothers & Company, A. Massari,—there are quite a number of them here. Is that enough, or do you want some more?
Q. Is Tropical Grocery Company a competitor of Bryan-Keefe?
A. Not exactly.
Q. Well, do they—
A. We formerly owned that business, and have just recently sold it to Mr. O. B. Alderman, who is now the present owner.
Q. Since the time that you sold it, do they sell groceires and allied products to the retailer stores?
A. Yes, sir.
Q. And do they sell them to your customers, too, sir?
A. We have a sort of gentlemen's agreement that I won't bother his trade very much, because he is a personal friend of mine. Of course, we have the privilege of selling his trade, but we just don't compete very strong in St. Petersburg for that business. Although there is no agree-

ment that we shouldn't, and it is understood that we can do so any time we wish.

Q. I see, there is no combination—

A. No, no, just an old valued friend, and he wanted to go in business, and I said, "Well, you take the St. Petersburg branch and let it go at that, but if I find I want to go over there and open another branch, I will do it,"
765 and he said, "Sure, go ahead." He doesn't work the Tampa trade at all, but there is no reason why he shouldn't if he wanted to. We have no understanding on that, and no definite understanding on the other, as far as that is concerned.

Q. Does your company handle salt?

A. Yes, sir.

Q. And does it purchase salt from the Morton Salt Company?

A. Yes, sir.

Q. And what type of salt does your company purchase from the Morton Salt Company?

A. We handle the 100 pound sacks of fish, fine, ice cream, the four pound package of ice cream, I mean, one and one-half pound flats of cheaper salt, and the two pound round salt.

Q. Now, is that two pound round salt—

A. Well, it is 26 ounces right now.

Q. Is that under th blue label of the Morton round package salt?

A. Yes.

Q. Called free running and iodized salt?

A. Correct.

Q. And what price do you pay the Morton Salt Company for that particular grade of salt?

A. Seventy-five cents a dozen.

Q. Seventy-five cents a dozen?

A. Yes.

766 Q. So, that would be $1.50 a case?

A. Yes, sir.

Q. It doesn't come in a dozen to a case, does it?

A. No, two dozen to a case.

Q. So, hereafter when I refer to Morton's free running salt, I will refer to a case of two dozen packages at $1.50 a case.

A. That will be all right, I will understand.

Q. Then, do you handle the package salt?

A. Yes.

Q. Is that Kleer salt?

A. I think we have handled some of that brand. There a number of brands, white crystal, I think we have handled, too.

Q. Do you purchase on a carload basis?

A. Yes.

Q. You have cars of salt that you purchase for your use and are shipped to you by the Morton Salt Company?

A. Yes.

Q. And do you receive any discount on the carload basis from the Morton Salt Company?

A. If we succeed in purchasing a certain quantity, we receive a discount of 10-cents a case.

Q. But I am talking about the carload now. When you get a carload of salt, do you receive any discount on that particular carload of salt?

767 A. No, because they bring it in in pool cars, and I think the pool car prices are the same as carload prices, I know of no differential. Now, when we buy for Lakeland, we have to buy a solid car, or we don't get the same price.

Q. And do you buy a solid car for Lakeland?

A. Yes.

Q. And what is in Lakeland that you are interested in? Have you a branch there?

A. Yes, sir.

Q. Will you name the cities and towns where you have branches?

A. At the present, we only have the Victory Grocery Company at Lakeland. Tropical Grocery in Petersburg was formerly a branch, but we just recently sold that to Mr. Alderman, as I have previously stated.

Q. And then Bryan-Keefe here is the mother company?

A. Yes, I have an affiliated company in Ft. Myers, Bryan-Keefe & Adams, of which I am treasurer.

Q. And that is at Ft. Myers, Florida?

A. Yes.

Q. When you purchase for the branch in Lakeland, Florida, known as the Victory Grocery Company, you get the carload price on that particular product when you do purchase on a carload basis, is that true?

A. That is true, or I hope it is.

768 Q. Would the invoice show any discount on that particular car?

A. You mean, in regards to this 10-cents a case?

Q. No, sir, in regard to other types of salt, other than the free running salt?

A. Occasionally we have a situation on the one and one-half pound flat salt where it might show 5-cents a case trade allowance, but on other occasions it does not. There is no definite rule on that.

Q. Now, you mentioned that on the round package free running salt, you get a 10-cent allowance from the Morton Salt Company on a quantity basis?

A. Yes.

Q. Will you explain that a little further, please, sir? What is that 10-cents for?

A. Well, for the 10-cents, we have our salesmen push this salt and see that the stuff is properly displayed in the retail stores, the packages dusted off, and take a general interest in furthering and promoting the sale of that salt in the retail stores that our salesmen call on.

Q. Does the Victory Grocery Company of Lakeland, Florida, share in that 10-cents a case allowance by the Morton Salt Company?

A. Yes. Well, it is exactly the same as Bryan-Keefe Company of Tampa. We don't have to give them the 10-cents. I do it just to make the boys up there feel 769 good.

Q. I am sure they feel pretty good about it. Does the Victory Grocery Company of Lakeland, Florida, purchase 5000 cases of Morton's free running salt per year?

A. Themselves?

Q. Yes.

A. No, I am quite sure they don't. I haven't figured it up, but I am sure they don't, because we just put all the purchases together.

Q. I see, and does the Bryan-Keefe Company of Tampa, Florida, the one unit, now, talking about your company located here, purchase 5000 cases of Morton's free running salt?

A. Exclusive of Lakeland?

Q. Yes.

A. No, they do not, I am quite sure. I haven't figured that up, either, but I am quite sure they don't within a period of one year.

Q. When was the last time you received a check from the Morton Salt Company on these purchases?

A. I wouldn't want to say positively, but it seems to me some six or seven months ago, but that is rather doubtful. I could look that up, of course, and give you the exact information.

Q. But approximately six or seven months?

770 A. I think so, yes. But lots of things happen, and you get confused as to dates sometimes.

Q. What is the resale price charged by Bryan-Keefe Company in the Tampa area for the round package free running salt?

A. That would run from $1.60 to $1.75, depending on the service we give with the sale. Cash and carry would be a little cheaper, and then we have to haul it away out in the country, and that is a little bit higher.

Q. So, the cost of transportation would have something to do with the resale price?

A. Oh, yes.

Q. I believe you stated you had a price of $1.60?

A. That is about our bottom price. I just had that in mind as being as cheap as we could possibly sell it. Somebody might cut that, but I wouldn't like it, that is only 10-cents on a case at $1.50.

Q. If a competitor of yours did sell Morton's round package salt at $1.58 per case, would that in any way affect your business?

A. It would probably cause some dissatisfaction among my customers if they found out about it. They wouldn't necessarily give them the business, but they would complain, at least. Of course, as a rule a man orders a string of groceries and a case of salt, and a few cents doesn't

771 swing the order from a regular customer, but we don't like to be out of line on too many items.

Q. Well, would the fact that you were out of line, as you state, on salt, have anything to do with the placing of an order for other commodities by the retail grocer?

A. Not necessarily, but if we get out of line on too many items, then we are in trouble, but we are out of line, of course, on all items at times. We have no uniform prices with our competitors. A customer gives us his order straight through, and as long as he feels we are giving him a square deal and he is getting a reasonable average on his grocery purchase, he is satisfied, but if we are consistently high on too many items, we have just lost a customer, that is all.

Q. Is the Economy Wholesale Grocery Company a competitor of yours?

A. Yes, they run a wholesale department and solicit business from the retail grocers, and, of course, they run retail stores, also.

Q. The Economy runs retail grocery stores?

A. Well, of course, I am not familiar with the interworkings of their business there. The Table Supply Stores Company is supposed to be controlled by them, but that, I don't know.

Q. How about the Pay & Take Wholesale Grocery?

772 A. Well, they are in relatively the same position, with some interlocking connection.

Q. But they also have a retail business?

A. Yes, they have what they call a cash and carry department.

Q. You stated that you sell, on some occasions, Morton's round package free running salt at $1.75 per case.

A. Yes, sir.

Q. Can you state the reason for that sir?

A. Well, maybe a customer up in Dade City, fifty or sixty miles from here, orders salt. The salt has to be hauled a long ways, it is heavy, and it costs money to run a truck, and so we charge more money for it.

Q. How long has it been since the Tropical Grocery Company was associated or had some interlocking corporate set-up with the Bryan-Keefe Company?

A. That was some six or seven months now.

Q. Six or seven months?

A. Yes.

Q. Up to that time, the Tropical Grocery Company was a branch of the Bryan-Keefe Company?

A. That is right, yes.

Q. And its purchases of salt were placed with the Morton Salt Company through the Bryan-Keefe Company?

A. Oh, yes, it was all invoiced to us, and some-
773 times we would buy it and haul it over, but if we could make a car, we would ship the car direct and save the freight.

Q. Since the severing of the legal connection between the two firms, has the Tropical Grocery Company, to your knowledge, been placing orders with the Morton Salt Company direct?

A. I don't remember right now, but we still buy a lot

of stuff for them. I don't know, Mr. Alderman just says, "Well, I would rather get my stuff from you on this canned goods, and what not." We bring in straight cars of canned goods to Tampa, and he can't buy straight cars, so he will come over and order 40 or 50 cases of canned goods, and I think, maybe, he has ordered some salt. I don't know, now, without looking it up.

Q. Have you talked with Mr. Alderman since you received this subpoena?

A. No, sir, I haven't seen him.

Q. Has the Bryan-Keefe Company, to your knowledge, purchased a full carload of salt from the Morton Salt Company to be delivered to its branch, or to be delivered to its main office here in Tampa?

A. Well, we usually buy pool cars here, largely.

Q. What do you mean by pool cars?

A. Well, they just make up a shipment coming to two or three jobbers and ship in one car, and we go around and get it at the dock.

774 Q. Do you haul it with your own trucks?

A. Yes.

Q. Are you billed directly by the Morton Salt Company for that, sir?

A. Yes, sir.

Q. With whom do you place your orders, through a salesman or broker?

A. Well, either one, we make no distinction between them.

Q. How often does the salesman call on the Bryan-Keefe Company to solicit orders for Morton salt?

A. It seems like every day, but of course, that is probably an exaggeration. Once a week, I should say. Now, about this date of the Tropical Grocery Company, that is a matter of record that we can determine exactly when that change was made, I have forgotten right now.

Q. Mr. Alderman was subpoenaed as a witness for the Commission here this morning, and hasn't put in an appearance. You don't know anything about that, do you?

A. He will be here, you needn't worry. I don't know anything about it, but I know he will be here, if he has got a subpoena, but he lives in Petersburg, and he might have got hung up on the way over.

Q. You made the statement, Mr. Keefe, that for this

10-cents that you receive as an allowance from the Morton Salt Company on a so-called quantity basis, you do
775 certain promotional work for the Morton Salt Company?

A. Well, we try to earn the 10-cents, yes.

Q. The 10-cents, then, is not on a quantity basis, but is for other services?

A. Well, I think it is perhaps on a quantity basis. I haven't looked into it very close. If they want to pay us 10-cents on salt, we get out and try to do something to earn it, and we did, but I think it is on the quantity basis right on. If we don't make the quantity, we don't get it.

Q. What do you do to show the Morton Salt Company that you are earning that 10-cents?

A. Well, I just tell our boys that we are interested in selling Morton salt, to see that it is properly displayed in the stores, keep the packages in good shape, and if any of them are busted, buy them from the merchant and bring them on in; just a little extra work like that, perhaps.

Q. When you do find some that are busted, do they bring them in, and does the Morton Salt Company make them good to you?

A. I think so. We put them in our rotten room, we have a place for that, and have a boy that looks after that, and he has instructions to get a hold of every man that comes in there and lead him back into that room and let him pick out his rotten merchandise. I hope he does it.

Mr. Haslett: I think that is all. Your witness,
776 Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Mr. Keefe, with respect to this 10-cent discount, do you know what quantity your company is required to purchase in order to be entitled to that discount?

A. I think it is 5,000 cases. Mr. Hillard, my assistant, looks after that, but I am quite sure it is 5,000.

Q. That is, in a 12 month consecutive period, is that correct?

A. Yes, sir.

Q. You don't have a contract with the Morton Salt Company, that you know of, which requires you to do any promotional work in order to earn that 10-cents?

A. Oh, no, we have no contract of any kind.

Q. It is simply a policy of your company to try to push the sale of that particular salt?

A. Yes, we have an incentive for doing so. We get paid 10-cents a case, and we try to earn the 10-cents.

Q. If you can get over on the quantity basis?

A. True.

Q. How often are you paid the discount, do you recall, Mr. Keefe?

A. Well, it is paid on the once a year basis, but the years do not run together.

777 Q. You mean, a 12 consecutive months' period?

A. Yes, in a 12 months' period, that we select, in a sense. We can say we want to run it, and then we start and run it for 12 months, and if we make it, all right, and if we don't, it is all wrong.

Q. If you don't make it in that 12 months, you don't get your discount, is that correct?

A. Well, that hasn't come up yet, but it may some time, and then we will find out. We are going to put up a holler for it, though, that we have worked for this thing and tried to earn it, and kept the stock in good shape, and think we ought to have the 10-cents, anyway, but whether we get it or not, I don't know.

Q. The last check that you recall that your company received was some six or seven months ago, as nearly as you can recall?

A. Now, I mentioned six or seven months. Now, I can't be sure of those things, because I didn't check them up, but I think that is about right. Now, it might be nine, I don't want to be made out a liar, because I don't intend to lie.

Q. I am accepting your answer as an estimate.

A. Yes, I think it is six or seven months, but I don't—I didn't know all this was going to be asked me, and I didn't think about salt, it didn't mean anything to me. I want my sugar rate now.

Mr. McBride: I think that is all.

778 *Redirect Examination by Mr. Haslett.*

Q. Mr. Keefe, when the Morton Salt Company sends you a check as a discount on your free running round package salt, does a statement come with it showing the amount of salt purchased in each month by your company during the preceding 12 months' period?

A. I don't know, it could, but I can figure it up myself. I don't remember whether there is a statement with that or not. I rather think—I don't know, there might have to be something on it.

Q. You don't know of your own knowledge?

A. No, sir, absolutely. I rather think there must have been something along with the check to tell us what it was for, because we don't get checks without somebody telling us what they are for, but I know if we didn't, I might figure it up for myself, anyway, because I remember giving it to the various houses involved, see, showing the results accomplished. For instance, Lakeland, I will say, "Well, now, here is $500, your share of this is $100." Of course, the manager likes to know he is being credited with $100 worth of effort.

Q. The same thing is true as to Tropical?

A. Yes, so I know I figured it up, even if they didn't help me.

Mr. Haslett: That is all, thank you very much for
779 coming, Mr. Keefe.

(Witness excused.)

Mr. Haslett: Mr. Alderman, come around and take the stand, please, sir.

OLIVER BRITT ALDERMAN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Alderman?

A. Oliver Britt Alderman, Sr.

Q. Where do you reside, Mr. Alderman?

A. St. Petersburg, Florida.

Q. And in what business are you engaged?

A. In the wholesale grocery business.

Q. And how long have you been in the wholesale grocery business?

A. Well, I have been in the wholesale grocery business about 10 or 12 years.

Q. And what company are you connected with, sir?

A. Tropical Grocery Company, St. Petersburg, right now.

Q. Is that a corporation?

A. No, sir.

780 Q. Is it a privately owned firm?

A. It is a privately owned firm.

Q. And you own the firm?

A. I own the firm.

Q. What is the business of the Tropical Grocery Company?

A. Well, the regular business of a wholesale grocery, serving hotels and restaurants in some cases, but mostly the retail grocery trade.

Q. Do they sell groceries and allied products to the retailer grocery stores, is that right?

A. That is right.

Q. And the retailer grocery stores are your customers?

A. That is right.

Q. Does your company handle or sell salt?

A. Oh, yes.

Q. And does it purchase salt from the Morton Salt Company?

A. That is right.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Well, we buy it in bags, both the ice cream and what we call fish salt, or sea salt, and the common fine, and in 36 of one and one-half pound packages of what they call white crystal salt, and the Morton's package salt, 26 ounce package.

Q. Morton's free running salt?

A. Morton's free running salt.

781 Q. Is that in the round package, blue label?

A. That is right.

Q. Do you also purchase the Morton's iodized salt in the round package?

A. That is right.

Q. And what price do you pay for the Morton's round package free running salt?

A. $1.50, I believe, or $1.60, which is it?

Q. $1.50?

A. I guess that is right.

Q. Has that price been in effect for a long time?

A. Well, I don't know if that is the last price we paid for the last car or not. I would have to get my invoices to find out.

Q. Do you purchase salt on the carload basis?

A. Usually, yes.

Q. And do you have coming in a particular car a mixture of types of salt?

A. Oh, yes.

Q. And on all salt coming in a car other than the round package free running salt, does your company receive a discount on the carload basis?

A. No, no discount. We are given to understand that we are to get 10-cents a case on all Morton's round package, provided we have used 5,000 cases or more in a year.

782 Q. I believe you misunderstood my question, Mr. Alderman.

A. Maybe I did.

Q. Where you purchase a carload of salt, and it contains several types of salt, on all salt other than the round package free running salt, do you receive a discount on the carload basis?

A. Not that I remember.

Q. But you get the carload price?

A. Yes.

Q. And then I believe you stated that you get a 10-cent discount per case on round package free running and iodized salt from the Morton Salt Company?

A. We did up until last year. I don't know whether we participated in that this year or not.

Q. Is the Tropical Grocery Company associated or affiliated in any way with any other grocery company?

A. Very much affiliated with the Bryan-Keefe Company.

Q. And what connection is there between them?

A. Just at the present, more or less of a gentlemen's agreement with regard to purchases in both quantity buying and I buy a good deal of merchandise from Bryan-

Keefe & Company myself, or the Tropical Grocery Company does.

Q. Is there any legal or corporate connection between the two firms?

A. Not now, no.

783 Q. You say not now?

A. No, sir.

Q. Was there ever?

A. Oh, yes.

Q. Will you tell us about that, sir?

A. Tropical Grocery Company was one of the units of the Gulf Grocery Company, a corporation, which owned Tropical and Bryan-Keefe & Company.

Q. And does the Gulf Grocery Company now own Bryan-Keefe & Company, or do you know, sir?

A. I don't know about that.

Q. But is there any legal corporate connection between the Tropical Grocery Company and the Gulf Grocery Company at the present time?

A. Not at the present time, no.

Q. Not at the present time?

A. No, sir.

Q. And there hasn't been for how long?

A. Well, I couldn't just say right offhand. I went to St. Petersburg and took charge of that unit in the fall of 1940, I should say October. Later, the transfer of that Tropical Grocery Company to myself from the Gulf Grocery Company, was worked out at a later date. Now, I couldn't say definitely what that date would be.

Q. Could you approximate it, sir, has it been six
784 or seven months ago or a year ago?

A. Possibly six or seven months ago it was finally wound up. As I say, I couldn't say specifically offhand.

Q. And since that time, there has been no corporate or legal connection between your company and any other wholesale grocery company?

A. That is right.

Q. Prior to the time that there was a severance of the connection, legal or corporate connection, between the Tropical Grocery Company and the Bryan-Keefe Company, did the Tropical Grocery Company purchase,—and I believe you stated that Tropical Grocery Company is located in St. Petersburg?

A. That is right.

Q. Did the Tropical Grocery Company in St. Petersburg purchase 5,000 cases of Morton's free running or iodized salt during a 12 consecutive months' period?

A. You say prior to the separation?

Q. Yes, sir.

A. Prior to the separation, If I remember, salt was bought by the Gulf Grocery Company for all units of which Tropical Grocery Company did receive salt at that time.

Q. But I want to know whether the one unit, Tropical Grocery Company, purchased 5,000 cases of free running salt during a 12 consecutive months' period?

785 A. No, they wouldn't handle that much salt.

Q. But as a part of the Gulf Grocery Company, and as a unit of the Gulf Grocery Company, it received a discount on the combined purchases of all units?

A. That is right, as I understand it. Mr. Keefe, the head of the Bryan-Keefe & Company, kept most of the records, and it is my understanding that we did.

Q. Did you hold any position in the Gulf Grocery Company?

A. Yes, I was vice-president and treasurer.

Q. And Mr. Keefe was president?

A. That is right.

Q. Does your company receive any other discount or allowance from the Morton Salt Company other than the 10-cents per case?

A. Not to my knowledge, no.

Q. Do you know the resale price of Morton's round package salt charged by your company to its retailer customers?

A. We get $1.75 to $1.80.

Q. Per case?

A. Per case, delivered.

Q. Will you state why you sell it at $1.75 to some customers and $1.80 to other customers?

A. Well, we have two units; we operate on a cash and carry basis for customers who come to the store and bring the money and haul the merchandise away, we make
786 a difference in price to those customers. Those that we deliver to and charge it, give them the service and delivery, we charge more.

Q. I see, so the difference between the cash and carry basis and the delivered price is brought about by the

fact that the transportation cost and carrying charge would be added to it?

A. Additional service, that is right.

Q. Would your business be in any way affected by the fact that one of your competitors was offering to sell salt and did sell salt to some of your customers at 2-cents under the price that you were offering to sell salt to the same customers for?

A. Oh, yes, any amount would affect the business.

Q. And it would be an adverse effect?

A. Oh, yes.

Q. Does your company sell its products in any states other than the state of Florida?

A. No.

Q. At the time that you were vice-president of the Gulf Grocery Company, did that company sell its products in any state other than the state of Florida?

A. Not to my knowledge. They may have had isolated shipment at some time or other, I don't know.

Q. But it was not the general practice?

A. No, not the general practice.

787 Q. Do you do any promotional or advertising work for the Morton Salt Company?

A. Well, we put it on the front of our cash and carry sheet from time to time, which is considered more or less an advertisement.

Q. Do you get paid for it?

A. No.

Q. That is done at your own initiative, is that right?

A. Well, sometimes. From time to time we have canners, manufacturers and packers that will ask us to put their particular items on the face of one of our price sheets that go out to all the trade, and they consider that an advertisement, of course.

Q. You publish your price sheet?

A. We get one out from time to time as prices change.

Q. And the price adhered to is published on the sheet?

A. That is right.

Q. Do you do any promotional work in connection with the resale of the products by the retailer to the consumer?

A. No.

Q. The 10-cent allowance that you receive from the Morton Salt Company on discounts is on a quantity basis?

A. I understand that is correct.

Q. And it is not for any promotional or advertising services?

788 A. No, sir, as I understood when we bought Morton's salt in quantities of 5,000 cases, that we would receive that as a quantity purchase. If we bought less than 5,000, we wouldn't participate in that.

Q. Your company hasn't been in business long enough at the present time to determine whether or not you are going to be eligible for that discount?

A. That is right.

Q. And you would not be able to know about that until the 12 consecutive months' period has passed?

A. At the expiration of 12 months.

Q. Have you any competitors?

A. Oh, yes.

Q. Would you name a few ~~of them~~ for us?

A. Weaver Grocery Company in St. Petersburg, O'Berry & Hall Company of Tampa, Economy Wholesale Grocery Company of St. Petersburg, Adams-Kennedy Company, Tampa,—do you want them all?

Q. Is J. Q. Brantley a competitor?

A. J. Q. Brantley doesn't go into St. Petersburg territory, I don't believe.

Q. Does Bryan-Keefe go into St. Petersburg?

A. Bryan-Keefe only work some of the units of the IGA members.

Trial Examiner Purcell: What does IGA mean?

789 The Witness: Independent Grocers Alliance.

By Mr. Haslett:

Q. That is a cooperative retail chain, isn't it, sir?

A. Yes, and Bryan-Keefe Company are the distributors for the IGA products in this area.

Q. Would you consider Bryan-Keefe & Company a competitor of the Tropical Grocery Company?

A. No.

Q. They don't solocit the same customers that you solicit?

A. Well, we solicit business from those IGA members, too, but it is only on certain such items that they need in a hurry, or maybe Bryan-Keefe is out of, but generally we don't work each other's customers.

Q. How is that brought about, is it by agreement?

A. No, not necessarily so. Maybe it was pretty much

of a gentlemen's agreement at the beginning, but Mr. Keefe's company can still work the trade over there, if he feels like it. That is his privilege, and he may sometimes do that, he may work some of the trade I don't know about, but there is no reason why he shouldn't work it if he wants to. At the time I pulled away from the Gulf Grocery Company, he didn't have the set-up for it just at that particular time, and maybe he hasn't decided that he wants to, but there is no agreement that he wouldn't do it. As a matter of fact, he can and probably will.

790 Q. Well, does your company solicit orders from IGA Stores for Morton's free running and iodized salt?

A. I couldn't say if my man does or not; he probably would if he saw it was low. My salesman would probably try to sell him Morton's iodized salt.

Q. Mr. Keefe's company, Bryan-Keefe & Company, would also try to sell him Morton's salt?

A. Oh, yes, that is right.

Q. Does C. D. Kenny Company operate in this territory?

A. Not to my knowledge, no.

Q. Does Thomas & Howard Company?

A. No.

Q. Neither of those firms have branches here?

A. No.

Trial Examiner Purcell: By "here", do you mean in St. Petersburg?

By Mr. Haslett:

Q. No, I mean Tampa.

A. Not to my knowledge.

Q. Do you sell in Tampa at all?

A. No, sir.

Q. You sell only in St. Petersburg?

A. Well, Pinellas County, I work a little outside the city itself. I go beyond the city limits on the other side, over on the Gulf beaches.

791 Q. But do any of your salesmen solicit customers within the city of Tampa?

A. No.

Q. But you come to the city limits of Tampa?

A. No, I don't come that far. I don't come across

the Bay. Maybe you don't know the location of the territory here, but the Bay separates St. Petersburg from Tampa, and we don't even come out to the Bay.

Mr. Haslett: I think that is all, your witness, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. I only have on question, Mr. Alderman. Would you name the branches and locations of the Gulf Grocery Company prior to the dissolution that you referred to of some six or seven months ago?

A. I don't believe I got that question.

Mr. McBride: Read it, please.

(The question referred to was read by the reporter.)

The Witness: Victory Grocery Company at Lakeland, Tropical Grocery Company at St. Petersburg and Bryan-Keefe & Company of Tampa were the three units.

By Mr. McBride:

Q. Was Bryan-Keefe & Adams of Ft. Myers a member of that unit?

792 A. Frankly, I couldn't tell you what the connection between Bryan-Keefe & Adams and the Bryan-Keefe & Company of Tampa is. I am sorry, I can't answer that for you.

Mr. McBride: That is all, Mr. Examiner.

Mr. Haslett: That is all, thank you very much, Mr. Alderman.

(Witness excused.)

Mr. Haslett: I would like to recall to the stand Mr. Keefe for just a few questions, Mr. Examiner.

Trial Examiner Purcell: Let the record show that Mr. Edward J. Keefe is being recalled at the instance of the Commission, and that he has heretofore been sworn.

EDWARD J. KEEFE was thereupon recalled as a witness for the Commission, having been previously sworn, and testified further as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Keefe, is the Bryan-Keefe & Company of Tampa associated in any way with the Gulf Grocery Company?

A. That came out, the Gulf Grocery Company was our regional incorporated name, but it was unknown. Bryan-Keefe & Company had been here a long time and we never could resell it to the public, but it was the legal entity, and then later was changed legally to Bryan-Keefe & Company.

793 Q. And how long ago was that, sir?

A. It is something around a year ago, but the public never realized it, because the Gulf Grocery Company was never put before the public; Bryan-Keefe Company was the name before the public.

Q. And the Gulf Grocery Company, then, does not exist any longer?

A. No, it is Bryan-Keefe & Company. The two names are really synonymous, but it was really incorporated as the Gulf Grocery Company and then later changed to Bryan-Keefe & Company.

Q. And the branch that you named in Lakeland and the Tropical Grocery Company in St. Petersburg, and the one in Ft. Myers, Florida, were the only three branches of the parent corporation, the Bryan-Keefe & Company here in Tampa?

A. Yes.

Mr. Haslett: I think that is all, sir.

Mr. McBride: I have no questions.

(Witness excused.)

795 BEFORE THE FEDERAL TRADE COMMISSION.

(Caption—4319)

Federal Court Room,
Federal Building,
Miami, Florida,
Monday, May 4, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

796 Mr. Haslett: I will call as the first witness for the Commission, Mr. Examiner, Mr. Goldberg.

GEORGE GOLDBERG was thereupon called as a witness for the Commission, having been first duly sworn, Testified as follows:

797 *Direct Examination by Mr. Haslett.*

Q. Will you state your full name for the record, Mr. Goldberg?

A. George Goldberg.

Q. And where do you reside, sir?

A. My residence?

Q. Yes.

A. 1764 S. W., 17th Street, Miami, Florida.

Q. And in what business are you engaged?

A. Wholesale grocery business.

Q. And how long have you been in the wholesale grocery business?

A. Here in Miami since 1926.

Q. And with what company are you connected, sir?

A. Florida Wholesale Grocery Company.
Q. And where is the Florida Wholesale Grocery Company located?
A. At the present time, 82 Northeast 26th Street.
Q. Is that in the city of Miami?
A. Yes.
Q. What position do you hold with that company, sir?
A. I own the company.
Q. You own the company?
798 A. Yes, sir.
Q. And you also operate the company?
A. Yes.
Q. You have complete charge of it?
A. Yes.
Q. What is the business of the Florida Wholesale Grocery Company?
A. Well, selling foods mostly, a whole line of groceries.
Q. You sell groceries and allied products to the retailer grocerymen?
A. Yes.
Q. Does your company have any competitors?
A. Yes, sir.
Q. Would you name some of your competitors here in Miami?
A. Well, at the present time, there is Hill Brothers, Inc., National Brands, Inc., Standard Wholesale Grocery Company, Chitty & Company, Dade Wholesale Cash & Carry, Economy Wholesale Cash & Carry, and of course, right at the present time there is a Consolidated Wholesale Cash & Carry, that is the Consolidated Cash & Carry Grocery Company, Inc. I believe that is about all, as far as the wholesale field in itself, that sell to the same people we sell to, and they are all right here in Miami.
Q. Does your company purchase or handle salt?
A. Yes.
799 Q. Does it make any purchases from the Morton Salt Company?
A. Yes.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. Well, we buy Morton salt in the round package and sometimes bulk salt in bags or in flat packages.
Q. Do you purchase the round package free running salt?

A. Yes, sir.
Q. And also the round package blue label iodized salt?
A. Yes, sir.
Q. And do you purchase those two types of salt from the Morton Salt Company?
A. Yes, sir.
Q. Do you know the price at the present time that your company pays for the round package free running salt from the Morton Salt Company?
A. You mean, right now?
Q. Per case, yes.
A. Well, I believe it is $1.50 a case.
Q. $1.50 a case?
A. Yes, sir.
Q. And the same price for iodized salt?
A. Yes, sir.
Q. Has that price been in effect for a long time?
800 A. It seems to me, yes.
Q. Does your company purchase any salt from the Morton Salt Company on a carload basis?
A. I don't think we ever bought a straight car from them, as far as I can remember.
Q. You say you have not bought a straight car?
A. No, I think we have always bought it in pool cars.
Q. In pool cars?
A. Yes.
Q. What do you mean by pool cars?
A. Well, we just don't buy a straight car. A shipment comes in here to the distributor and he distributes it around.
Q. A shipment comes into a distributor?
A. Yes, they have a distributor here, or a broker, rather.
Q. And does he distribute the salt?
A. Yes, whenever the salt comes in, they usually ship it by boat, so they give us an order and we go down to the docks and pick it up.
Q. He doesn't ship the salt from the dock to your warehouse, does he?
A. No, sir.
Q. You haul that in your own trucks?
A. That is right.
Q. What is the resale price of salt by your com-
801 pany to retailers?

A. Well, at the present time, I believe our price is $1.65 a case.

Q. $1.65 a case?

A. Yes.

Q. And has that been in effect for a long time, sir?

A. Well, I don't know. I guess since I have been paying $1.50. Of course, we always try to make 15-cents a case profit.

Q. Does your company receive any discount or allowances of any sort from the Morton Salt Company?

A. Yes, we do at the end of the year when our purchases are completed up to 5,000 cases or more.

Q. And what do you receive from the Morton Salt Company?

A. Ten-cents a case.

Q. And how is that paid by the Morton Salt Company?

A. In a credit memorandum.

Q. And does it come once a year or twice a year?

A. Once a year.

Q. Once a year?

A. Yes, sir.

Q. And it comes in the form of a credit memorandum?

A. Yes.

Q. And the credit memorandum is used for the payment of your account to the Morton Salt Company?

802 A. Yes, we owe them money and we deduct it when the payment is made.

Q. On your purchases of salt from the Morton Salt Company on a pool car basis, do you receive the carload price?

A. Well, I don't really know. As far as I know, I believe we only have one price, as far as my knowledge is concerned. We are always trying to buy at the cheapest possible price and get the maximum price for it.

Mr. Haslett: Mr. Reporter, I hand you herewith 12 documents and ask that you mark them for identification as Commission's Exhibit No. 88-A to L, inclusive.

(The documents referred to were marked "Commission's Exhibit 88-A, 88-B, 88-C, 88-D, 88-E, 88-F, 88-G, 88-H, 88-I 88-J, 88-K, and 88-L" for identification.)

By Mr. Haslett:

Q. Mr. Goldberg, I hand you what has been marked for identification as Commission's Exhibit 88-A to L, and

ask you to take each document and describe each document all the way through, sir.

A. Do you want me to read it?

Q. No, just describe it.

A. Morton Salt Company—

Q. Is that an invoice of the Morton Salt Company?

A. Yes.

Q. What is the invoice number, sir, if it has one?

803 A. 60707.

Q. And has it a date, sir?

A. Yes, date shipped, February 9, 1940.

Trial Examiner Purcell: February what?

The Witness: February 9, 1940.

By Mr. Haslett:

Q. What is the next document?

A. This is an acknowledgment from the Morton Salt Company to us that this order was received in their office at Nashville, Tennessee, that is the district office for that area, from the local broker. They mailed this acknowledgment to us that the salt would be shipped.

Q. Has is a number, sir?

A. Yes, sir, 137.

Q. The next document, now, what is that document?

A. That is a customer's copy from the General Warehouse & Storage Company, Inc., Miami, Florida, who are the people who distribute the salt for Morton Salt Company to us.

Q. And that is Commission's exhibit 88-C, is that correct, sir?

A. Yes, sir, and this is the same thing that just completes the shipment. The two slips here cover the same shipment, it is just that sometimes the truck can't always haul the merchandise, and they will come back again and pick it up.

Trial Examiner Purcell: Is that 88-D that you are 804 referring to?

Mr. Haslett: Yes, sir.

By Mr. Haslett:

Q. Commission's exhibit 88-D is the same as Commission's exhibit 88-C, is that correct, sir?

A. Yes, sir.

Q. And what is Commission's exhibit 88-E?

A. This is an order from the Morton Salt Company representative to us so we can go down to the Bull Line, the Bull Steamship Line, Miami, for them to deliver us the merchandise, and they tell us here that the free time expires at a certain date.

Q. That is in connetion with the same sale?

A. The same sale, yes.

Q. And Commission's exhibit 88-F is what, sir?

A. This is the order from the broker, A. Earle Clark & Son, Inc., to the Bull Line to deliver as mentioned.

Q. And what is Commission's exhibit 88-G?

A. This is just a copy?

Q. A copy of Commission's exhibit 88-F?

A. Yes, sir.

Q. What is Commission's exhibit 88-H?

A. This is a credit memorandum from the Morton Salt Company. We received it on April 12, 1940, and says, "Adjustment as per statement attached to apply on next remittance, $510."

805 Q. Has it a number, sir?

A. Yes, No. 57089.

Q. And will you describe Commission's exhibit 88-I?

A. This is the attached statement showing our purchases during each month of the past year in cases, how many cases we bought each month.

Q. And will you describe Commission's exhibit 88-J?

A. This is another credit memorandum of the same nature as of Fbruary 26, 1941, for $513.

Q. Has is a number, sir?

A. Yes, No. 66050.

Q. Now, will you describe Commission's exhibit No. K?

A. This also shows a statment, just each month, how many cases of salt we received in totalling this credit memorandum.

Q. Will you describe the next document, sir?

A. This document here shows our record of how many cases we sold. We sold some salt here to two of our competitors at cost. We do business with these people, and we have an agreement with them. This is for our own records.

Q. Just describe the document.

A. This shows that during that year, we received for ourselves 2,985 cases of salt. We resold 1,355 cases to National Brands, Inc., and 790 cases to the Dade Wholesale Grocery Company.

Mr. Haslett: I offer it, Mr. Examiner.

806 Mr. McBride: I have no objection, Mr. Examiner, with respect to Commission's exhibits No. 88-A to K, inclusive for identification. I object to the admission in evidence of Commission's exhibit No. 88-L, for the reason that it represents simply tabulation of sales made, presumably, by the Florida Wholesale Grocery Company. The Florida Wholesale Grocery Company is not a respondent in this case, and their sales are not germane to the issues in this case. The balance of the documents included under the number 88 pertain to the transactions between Morton Salt Company and Florida Wholesale Grocery Company. to that, those documents are germane. For the reasons indicated, I object to the admission of Commission's exhibit 88-L.

Mr. Haslett: Mr. Examiner, it is true that the Florida Wholesale Grocery is not a respondent in this case, but Florida Wholesale Grocery Company is now on the stand as a witness in support of the Commission's case, and has properly identified the document as being a part of its books, records and files, showing what the document shows itself, of sales made by the Florida Wholesale Grocery Company to its various competitors. It is very pertinent and relevant to the issues in this case, to show that the sales of the Florida Wholesale Grocery Company itself did not aggregate 5,000 cases per year.

Mr. McBride: If the Examiner please, I object to

807 counsel's statement. The document shows their purchases from the Morton Salt Company aggregated 5,000 cases or better. Now, this trial has nothing to do with the sales of Florida Wholesale Grocery Company, but with the sales of Morton Salt Company to its customers.

Trial Examiner Purcell: Let's go off the record, please.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. I will overrule the objection.

Mr. McBride: As to that, Mr. Examiner, I should like to reserve my right of appeal on the basis previously indicated.

Trial Examiner Purcell: You may have it.

The reporter will please mark the instruments described admitted in evidence as Commission's Exhibits 88-A to L, Inclusive.

(The documents referred to, heretofore marked for

identification "COMMISSION'S EXHIBITS 88-A, 88-B, 88-C, 88-D, 88-E, 88-F, 88-G, 88-H, 88-I, 88-J, 88-K and 88-L" were received in evidence.)

By Mr. Haslett:

Q. Mr. Goldberg, I again hand you Commission's exhibits No. 88-A to L, and ask you to refer to Commission's exhibit 88-L, and state whether or not the Florida
808 Wholesale Grocery Company purchased from the Morton Salt Company for resale to the retailer customers 5,000 cases of free running salt during the 12 months, the 12 consecutive months' period, as indicated thereon?

Mr. McBride: I object to that question, Mr. Examiner. Counsel is permitted to ask the witness, I assume, whether they purchased, Florida Wholesale, 5,000 cases or more from Morton Salt Company, but he has now a double question wrapped up in one, and I object to the question in its present form.

Trial Examiner Purcell: Perhaps counsel can segregate the questions.

Mr. Haslett: I don't want to segregate the question. I want to go ahead the way that I put it forward. If I segregate the question, it doesn't mean anything. I would like the Examiner to hear the question re-read.

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: I will overrule the objection. Does the statement show what the purchases were made for, for use by this respondent or for resale to the retail trade? Are they segregated?

Mr. Haslett: The statement is segregated, but it has
809 initials instead of names, and I am trying to clear that up just a bit, sir.

Would you like to have the question re-read, Mr. Goldberg? Do you understand the question?

The Witness: Yes, I do. Do I have to answer it?

By Mr. Haslett:

Q. Yes.

A. Well, you mean, you want me to answer this question, what is on this paper, is that the idea?

Mr. Haslett: No, sir. Will you read the question again, Mr. Reporter, so that he may understand it thoroughly?

(The question referred to was re-read by the reporter.)

The Witness: We don't have any particular way of buying our stuff just for resale, we sell to anybody at all. We sell lots of stuff to our competitors. We not only sell them salt, we sell them everything else, and we don't make purchases for just certain purposes, unless we have a certain special order for it, but such things as salt, such a common thing, we sell to anybody.

By Mr. Haslett:

Q. But you didn't answer my question. I am asking you whether or not, Mr. Goldberg, your company sold to retailers during the period specified as represented by Commission's exhibit 88-L, 5,000 cases of Morton's free running or iodized salt?

810 Mr. McBride: Excuse me, Mr. Examiner. May I have that question read back?

Trial Examiner Purcell: Read the question.

(The question referred to was read by the reporter.)

Mr. McBride: Thank you.

The Witness: Well, that is hard for me to say, who we sold it to, because there is no way of telling. We make sales every day, and we will just have to go back to the books and take every sale that was made. This memorandum here doesn't show it, and there is no way for me to tell you who I sold to, and when, 5,000 cases.

By Mr. Haslett:

Q. Did your company make purchases of Morton's salt for the National Brands, Inc., of this city?

A. Not particularly for them, we just bought salt and we sold them salt, and they would wholesale it during that year. Yes, we did, the record shows right there the cases we sold them.

Q. Did your company give to the National Brands a 10-cent discount on each case of Morton's salt resold by your company to National Brands?

Mr. McBride: I object to that question, if the Examiner please, as to whether they gave them a 10-cent discount, unless counsel has first established what the price is. We are talking now about the price of Florida Wholesale

811 Grocery to its customers.

Mr. Haslett: I will withdraw the question, Mr. Examiner, and lay my foundation as to the price.

By Mr. Haslett:

Q. What price did National Brands, Inc., of this city pay the Florida Wholesale Grocery Company for Morton's free running and Morton's iodized salt per case?

A. Well, I have no way of telling right offhand, because I haven't got anything to show accurately what was sold.

Q. Well, did you sell them at the price that you paid for it?

A. Yes.

Q. Or did you make a profit off of it?

A. No, we sold it at the price we paid for it.

Q. You testified you pay $1.50 for it.

A. That is right.

Q. So, you sold it to them at $1.50, is that correct, sir?

A. That is right.

Q. Did you allow them the 10-cent discount on the purchases they purchased from you?

A. Yes, we did.

Q. I see. And how was that paid, sir?

A. That, I couldn't say, but I guess at the end of the year.

Q. Well, you got your money from the Morton Salt Company and you passed it on to National Brands, Inc., 812 is that correct, sir?

A. That is right.

Mr. McBride: Mr. Examiner, I wish to object again to counsel's question about passing it on. He can inquire into the arrangement under the Examiner's ruling, but I am objecting to the inference left in counsel's question about passing something on.

Mr. Haslett: May we get off the record just a minute?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Let me reframe the question, Mr. Examiner.

By Mr. Haslett:

Q. When you received the 10-cent discount per case on the purchases of the Florida Wholesale Grocery Company from the Morton Salt Company, did you give, or remit a 10-cent discount to the National Brands, Inc., on each case of salt that they purchased from you during that same period of time?

A. I believe I did, yes.

Q. And is that also true as to the Dade Wholesale Grocery Company?

A. That is correct.

Q. Both of them were handled alike?

813 A. That is right.

Q. Did you also sell the Dade Wholesale Grocery Company at $1.50 per case?

A. I believe so. I haven't the records in front of me.

Q. You didn't make any profit on the Dade Wholesale Grocery Company?

A. No, sir.

Q. You sold them at cost?

A. That is right.

Q. Less the 10-cent discount?

Mr. McBride: If the Examiner please, I again object to this "less the 10-cent discount," for reasons already indicated.

Trial Examiner Purcell: Let it stand.

Mr. Haslett: Mr. Examiner, he hasn't answered the question yet, Mr. Examiner.

The Witness: It isn't a 10-cent discount.

By Mr. Haslett:

Q. What would you call it, sir?

A. Well, it is a quantity price.

Q. Without the combined purchases of the National Brands, Inc., and the Dade Wholesale Grocery Company, would you have been eligible for the 5,000 case quantity discount?

Mr. McBride: If the Examiner please, I object to that, because there again counsel is trying to bring in the

814 resale of this witness' company and the basis of his qualification for a discount from the Morton Salt Company. I object to a question that calls for a speculative answer.

Trial Examiner Purcell: I will overrule the objection. I think the question is fair. The time has already elapsed, as shown by the statement, Commission's exhibit 88-L, and it is a fair question to ask the witness whether or not the Florida Wholesale Grocery Company would have qualified for the 5,000 case discount if it had not been able to sell the amount as shown to the National Brands, Inc., and Dade Wholesale Grocery Company.

Mr. McBride: Of course, the Examiner realizes that there is a tacit assumption in counsel's question to the effect that the Florida Wholesale Grocery Company might not have succeeded in selling the salt in some other fashion or to some other buyers. He is confining the question to—

Trial Examiner Purcell: (Interrupting.) I am going to be reasonable about it, and assume that if he could have sold that much more salt in other directions, he would have done so, as well as the salt he actually did sell. He may answer the question.

Mr. Haslett: Read the question back, Mr. Reporter, please.

(The question referred to was read by the reporter.)

The Witness: Only if I would get 5,000 cases, but
815 we made our minds up that we were going to get 5,000 cases and get the 10-cents, regardless of who we sold the salt to, because we weren't going to bring in that salt and have to pay the extra 10-cents a case.

Mr. Haslett: Now, Mr. Goldberg, I will ask that the question be re-read. You haven't answered my question. Your answer isn't responsive to the question.

Will you read the question again, Mr. Reporter, and, Mr. Witness, answer the question. Just listen to it and then you will be sure to get the significance of it.

(The question referred to was re-read by the reporter.)

The Witness: Well, according to the records, we only received close to 3,000 cases. Of course, we wouldn't, that is the only way, but we had made up our minds we were going to buy salt in a year's time in 5,000 case lots, because we just couldn't afford to lose 10-cents a case, and we would want to get it regardless of who we sold it to. We were going to purchase it if necessary to get the 10-cents, to bring the total up to 5,000 cases at the end of the year, because that it why we kept a record every month how much we had, and at the end of the period we knew just how much we were short and we would get that much more to get the 5,000 cases. Now, that is the only way I can answer you.

By Mr. Haslett:

816 Q. Now, have you any single customer, or did you have any single customer that purchased any more than the National Brands, Inc.? Was that your largest purchaser of Morton's salt?

A. I couldn't say offhand, sir, because we have no way to tell.

Q. Have you any customers that purchase 1355 cases of salt during a 12 consecutive months' period?

A. One single customer?

Q. Yes.

A. Well, I should say offhand, I don't know. I doubt it, but I don't say for sure. I couldn't say until I checked my sales. Of course, I don't handle the sales work.

Q. Again referring your attention to Commission's exhibit 88-L, I will ask you to state whether or not your company would have qualified during the time specified on the exhibit if you had not made the sales to the National Brands, Inc., and Dade Wholesale Grocery Company?

Mr. McBride: If the Examiner please, one moment, may I glance at that exhibit?

The Witness: In other words, if we wouldn't sell these two items over here, well, we wouldn't get any 5,000 cases, and we wouldn't get the 10-cents, too, but we wouldn't get the 10-cents.

Trial Examiner Purcell: Are you satisfied with the 817 answer, Mr. Haslett?

Mr. Haslett: Yes, sir.

By Mr. Haslett:

Q. Do you know A. Earle Clark & Son, Inc.?

A. Yes.

Q. What is that firm, sir?

A. They are in the general brokerage business.

Q. Are they the brokers for the Morton Salt Company?

A. Yes, as far as I know.

Q. Do they solicit business from you on behalf of their principal, Morton Salt Company?

A. Yes.

Q. Do you place orders with them for the round package and free running salt?

A. Yes, sir.

Q. Also the iodized salt?

A. Yes, sir.

Q. Did Morton's brokers know that you were reselling to National Brands, Inc., and Dade Wholesale Grocery Company?

Mr. McBride: If the Examiner please, I object to that

question. How can this witness testify as to whether they knew or not?

Mr. Haslett: I will withdraw the question.

By Mr. Haslett:

Q. Did you ever advise them that you were selling
818 Morton's salt to National Brands, Inc., and Dade Wholesale Grocery Company?

A. I don't think I did. I didn't see any reason for telling them.

Q. You wouldn't say that they didn't know, would you, sir?

A. Well, I don't know. They probably could find out some other way, but not through our house, as far as I know.

Mr. Haslett: Mr. Reporter, I hand you ten documents and ask that they be marked for identification as Commission's exhibit No. 89-A to K, inclusive.

(The documents referred to were marked "Commission's Exhibit 89-A, 89-B, 89-C, 89-D, 89-E, 89-F, 89-G, 89-H, 89-I, 89-J, and 89-K" for identification.)

By Mr. Haslett:

Q. Mr. Goldberg, I hand you herewith what has been marked for identification as Commission's exhibit 89-A to 89-K, and ask you to begin at 89-A, this document here, and describe each of them through the whole exhibit.

A. Do you want me to read this, too?

Q. Yes, what is that, sir?

A. This is the total of the invoice that our bookkeeper made, the tape off the adding machine.

Q. What is the next document?

A. The next document is invoice No. 70937, dated October 2, 1941, account of Morton Salt Company to the
819 Florida Wholesale Grocery Company. The next one is a copy of the same invoice, the same thing I just read.

Q. Am I correct when I state that Commission's exhibit No. 89-C for identification is a copy of Commission's exhibit 89-B for identification?

A. Yes, sir.

Q. What is Commission's exhibit No. 89-D?

A. This is to Florida Wholesale Grocery Company,

from A. Earle Clark & Son, Inc., a memorandum that they delivered 50 cases of salt to West Palm Beach, Florida.

Q. And has it an order number, sir?

A. Yes, 2389.

Q. And has it a date, sir?

A. Yes, October 7, 1941.

Q. 1941?

A. Yes.

Q. And what is this document, sir?

A. This is order No. 2008, A. Earle Clark & Son, Inc., Merchandise Brokers, to the Florida Wholesale Grocery Company, dated August 26, 1941.

Q. What is this document, sir? That is, Commission's exhibit No. 89-F.

A. This is an invoice from the Morton Salt Company of October 14, 1941, bearing number 73125.

Q. What is the next one?

820 A. This is another invoice from the Morton Salt Company, No. 74203, dated October 20, 1941.

Q. Is that to the Florida Wholesale Grocery Company?

A. Yes.

Q. All right.

A. The next one is a delivery ticket from the A. Earle Clark & Son, Inc.

Q. Is that Commission's exhibit No. 89-H?

A. Yes, order No. 2482, and dated 10-14-41.

Q. Of A. Earle Clark & Son, Inc.?

A. Yes.

Q. And Commission's exhibit 89-I for identification, what is that?

A. That is an order on the Bull Line, dated October 30, 1941, pro number 94. This is an invoice from the Morton Salt Company of October 29, 1941, No. 76747.

Q. Now, that is Commission's exhibit No. 89-J for identification?

A. Yes, sir, dated October 29, 1941.

Q. Now, Commission's exhibit for identification 89-K?

A. Dated October 27, 1941, No. 1311.

Q. What is it?

A. The General Warehouse & Storage Company, Inc.

Q. For the account of what, sir?

A. The Morton Salt Company.

821 Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: If the Examiner please, I have no

objection to the admission in evidence of Commission's exhibit 89-A to K, inclusive, in so far as the typewritten portions thereof are concerned. I object to their admission in evidence in so far as there are pencil or ink notations on any or all of the exhibits just referred to.

Mr. Haslett: The documents are offered, Mr. Examiner, for what they purport to be. The pencil notations contained thereon are a part of the document, and I offer them for the whole document, and no part of it.

Mr. McBride: If the Examiner please, in so far as any mutilation of the documents are concerned by pencil notations, I have no way of knowing who made them, under what circumstances, and so forth. I have no objection, however, to the typewritten portions of any and all of the documents.

Trial Examiner Purcell: May I examine those, Mr. Haslett?

Mr. Haslett: I will be glad to hand them back to the witness, Mr. Examiner, and ask him to identify the writing that may appear thereon.

Trial Examiner Purcell: Mr. Haslett, if you can connect them up with this witness, that is to say, the pencil and pen and ink memoranda, all right, but otherwise, I am afraid I will have to exclude them as to the notations.

822 By Mr. Haslett:

Q. Mr. Goldberg, I again hand you Commission's Exhibit for identification No. 89-A to K, and ask you to state whether the pencil notations appearing on Commission's Exhibit No. 89-B in red pencil were made in the course of your business by one of your employees or yourself?

A. By one of my employees.

Q. It was, sir?

A. Yes.

Q. I will ask you to state whether the red pencil notations made on Commission's exhibit for identification 89-D was made in the course of your business by either one of your employees or yourself?

A. This particular writing here, I don't think that was made in our office. I think it was made in the broker's office.

Q. In the broker's office?

A. Or somewhere else. I don't think it was made in our office. I don't think this writing is familiar.

Trial Examiner Purcell: Mr. Goldberg, you will have to speak louder so I can hear you.

The Witness: Yes, sir, this one here is 89-D, isn't it?

By Mr. Haslett:

Q. Yes, 89-D for identification.

823 A. It is marked in red pencil here, your Honor, and I can't verify—I know it is not my writing, and I don't think it is any one of our employees.

Trial Examiner Purcell: That is what number?

The Witness: 89-D, sir.

Trial Examiner Purcell: Commission's Exhibit 89-D?

The Witness: Yes, sir.

By Mr. Haslett:

Q. Do you know how it got on there, sir?

A. No, sir, I have no way of knowing. I have no way of telling who would get them.

Q. Mr. Goldberg, will you please talk real loud? The reporter is taking everything you say down in shorthand.

A. Yes.

Q. Now, the pencil notations that appear on Commission's Exhibit 89-F, was that made in the course of your business and by one of your employees?

A. Yes, it was.

Q. And does the pencil notation that appears on Commission's exhibit for identification 89-G in red pencil, was that made in the course of your business by one of your employees or yourself?

A. Yes, sir.

Q. The pencil notation that appears on Commission's exhibit 89-H for identification, was that made by one 824 of your employees in the course of your business?

A. That is hard for me to tell. This one here, I couldn't very well say.

Q. And the pencil notation that appears on Commission's exhibit 89-J for identification?

A. In red pencil?

Q. In red pencil.

A. Yes.

Q. Was that made in the course of your business by one of your employees?

A. By one of my employees.

Q. And the pencil notation that appears on Commission's exhibit for identification, 89-K, was that made by one of your employees in the course of your business?

A. This one here, yes.

Mr. Haslett: I offer them, Mr. Examiner, again.

Trial Examiner Purcell: In view of the explanation of the witness, I will overrule the objection of counsel for the respondent as heretofore stated as to all of the exhibits with the exception of 89-D, as to which the pencil memorandum appearing thereon is excluded from evidence, and the instruments consisting of typewritten and printed portions thereof admitted with this qualification, and the reporter will so mark the instruments described as Commission's Exhibit 89-A to K in evidence.

825 (The documents referred to, heretofore marked "COMMISSION'S EXHIBIT 89-A, 89-B, 89-C, 89-D, 89-E, 89-F, 89-G, 89-H, 89-I, 89-J, and 89-K", were received in evidence.)

Mr. McBride: Mr. Examiner, do I understand that your ruling on 89-D was predicated upon this witness' inability to identify the penciled memorandum appearing thereon?

Trial Examiner Purcell: Yes, Mr. McBride.

Mr. McBride: Then, may I request the same ruling with respect to the pencil memorandum on Commission's Exhibit 89-H, with respect also to pencil memorandum?

Trial Examiner Purcell: 89-H?

Mr. McBride: That is right.

Trial Examiner Purcell: I didn't so understand Mr. McBride. He identified everything except 89-D.

Mr. McBride: No, on the contrary, as to 89-H, the witness stated that he wouldn't know whether that was written by his employee, or who it was, and he could not identify it.

Trial Examiner Purcell: Show the instrument to the witness again.

Mr. Haslett: It is quite satisfactory. I will accept that, sir, and have the pencil memorandum appearing on the document identified as Commission's Exhibit for identification 89-H, excluded, but ask that the document be

826 received in evidence.

Trial Examiner Purcell: I will so rule.

By Mr. Haslett:

Q. Mr. Goldberg, would your business be affected by the fact that a competitor of your company sold Morton's round package blue label free running and iodized salt to your customers at a 2-cent differential in price under the price that you were offering to sell the Morton's blue label salt?

A. I guess it would.

Q. You would either have to meet it or lose the business, is that correct, sir?

A. That is right, in most cases.

Q. Now, would your business be affected by the fact one of your competitors was paying $1.35 a case for Morton's free running and Morton's iodized blue label salt, while at the same time you were paying $1.40 a case for it, sir?

Mr. McBride: If the Examiner please, I object to that question, for the reason previously indicated in these hearings.

Trial Examiner Purcell: Objection overruled.

Mr. McBride: I make my usual reservation.

Trial Examiner Purcell: You have your exception automatically.

The Witness: Would you read the question again, please?

827 Mr. Haslett: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Well, it would, if he would cut the price. I mean, sell it cheaper than whatever we could sell it for.

By Mr. Haslett:

Q. What effect would it have upon your business if a competitor was paying $1.30 a case for it, while at the same time you were paying $1.40 a case for Morton's free running salt?

Mr. McBride: If the Examiner please, the same objection.

Trial Examiner Purcell: The same ruling.

The Witness: Well, there are two ways of answering that.

By Mr. Haslett:

Q. I just want you to answer it the way you feel is right.

Trial Examiner Purcell: Off the record a moment.

(A discussion was had off the record.)

Mr. Haslett: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Well, it just means one thing, that he was buying cheaper than we were buying.

By Mr. Haslett:

Q. And would that have an effect upon your business?

828 A. Well, he would pass it on to the trade, or he would just make that much more money, that is the only way I could answer that.

Q. Do you have any retailer stores associated with your company?

A. No, sir. Pardon me just a minute. You mean, associated which way?

Q. That have any legal connection with your company?

A. No, sir.

Q. Do you do any specialty or missionary work for the Morton Salt Company?

A. No, sir.

Q. Do you do anything to promote the sale of Morton Salt Company's products, round package free running salt?

A. You mean, in which way?

Q. In any way, sir.

A. We don't advertise anything, if that is what you mean. We don't advertise it.

Q. Do your salesmen push the sale of Morton's salt to your retailer customers?

A. Well, not necessarily, I don't think, no more than anything else.

Q. Do your salesmen call on the retailer trade?

A. Yes.

Q. Do your salesmen call upon the National Brands,

829 Inc., and Dade Wholesale Grocery Company in order to sell them Morton's salt?

A. No, sir.

Q. You didn't solicit their business?

A. Well, it is a house account, not the salesmen, the house sells it. You see, we have some customers that the house sells, and others that the salesmen sell.

Mr. Haslett: I think that is all, your witness, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Mr. Goldberg, I show you Commission's Exhibit No. 88-L, which you previously examined, and ask you to state whether or not that is in your handwriting?

A. No, sir.

Q. In whose handwriting is that exhibit?

A. Well, as far as I can tell, it is one of our bookkeepers.

Q. You don't know for sure?

A. Well, his writing is a little familiar to me, of course.

Q. But you didn't prepare it yourself?

A. No, sir.

Q. Now, I show you, also, Mr. Goldberg, Commission's exhibit No. 89-E, and I call your attention to the notation there, "National Brand 75 cases plain; 75 cases iodized," and ask you whether or not that distribution sheet was
830 made up in that manner by A. Earle Clark & Son, Inc., on the instructions of the Florida Wholesale Grocery Company?

Mr. Haslett: I object to that, Mr. Examiner, the document speaks for itself.

Mr. McBride: I don't think it speaks for itself at all, Mr. Examiner.

Trial Examiner Purcell: The objection is overruled.

The Witness: Do you want me to answer that?

By Mr. McBride:

Q. If you please.

A. This here, I guess so, as far as I know. I don't think they would do it any other way, but get instructions from somebody.

Q. In other words, if you made or placed the purchase covered by this particular exhibit, then you would instruct them how you wanted it distributed and they would make out the distribution slip as per your instructions?

A. Some people in the office, not my personal instructions.

Q. So far as you know, in the general course of your business that would be true?

A. Yes, sir, that is right.

Q. I show you Commission's exhibit 89-H, and call your attention on that exhibit to similar notations to which you

have just testified with respect to the Dade Wholesale
831 and National Brands, Inc., and in that case is the distribution shown on that exhibit set up through instructions of the Florida Wholesale Grocery Company, as far as you know?

A. As far as I know, yes.

Trial Examiner Purcell: Is that order No. 2482?

Mr. McBride: That is right, 2482.

By Mr. McBride:

Q. I believe you testified, Mr. Goldberg, that sales made by the Florida Wholesale Grocery Company to Dade Wholesale Grocery Company or the National Brands, Inc., were pursuant to solicitation of a regular house account by the Florida Wholesale Grocery Company?

A. Yes, sir, they go on the house sales.

Q. And that is pursuant, also, to some arrangement Florida Wholesale Grocery Company has with each of those two other companies, is that correct?

A. Yes, sir.

Q. Morton Salt Company was not a party to either of those arrangements, were they?

Mr. Haslett: I object, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Repeat the question, please.

(The question referred to was read by the reporter.)

The Witness: By soliciting the business from the people?

832 By Mr. McBride:

Q. No. Let me reframe it this way: The parties to that arrangement consisted entirely, in the case of the Dade Wholesale Grocery Company of Dade Wholesale Company and Florida Wholesale Company?

A. Yes, sir, that is right.

Q. And the parties to the arrangement between the National Brands, Inc., and Florida Wholesale Grocery Company, consisted entirely of the National Brands, Inc., and Florida Wholesale Grocery Company?

A. That is correct.

Q. And Morton Salt Company was not a party to your contract or arrangement in either case?

A. Well, as far as I know, I don't see where they should be.

Q. Well, they didn't sign any document or be called into your office in making that arrangement?

A. No, sir.

Mr. Haslett: Mr. Examiner, I am going to object to that last question and move to strike the answer, as it tends to alter the terms of a written document. Commission's exhibit No. 88-E and Commission's exhibit No. 88-H show that the Dade Wholesale Grocery Company and National Brands, Inc., names appear on the agent's memorandum, which agent is the duly authorized agent of the Morton
833 Salt Company, and any knowledge of transactions whereby Morton Salt Company sold to the Florida Wholesale Grocery Company through A. Earle Clark & Son, being the authorized broker of the principal, Morton Salt Company, is knowledge to the Morton Salt Company, and that tends to alter the terms of that instrument.

Mr. McBride: If the Examiner please, there are at least a half a dozen reasons why that objection can't be sustained. In the first place, I am asking questions of the witness here with respect to his arrangement with two of his customers, and I don't know where that question or the answer to those questions have anything to do with any so-called written arrangements. We haven't any in evidence here. Now, that is one reason.

Trial Examiner Purcell: That is enough, sir. I will overrule the objection.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Goldberg, do you know whether or not of your own knowledge A. E. Clark & Son, Inc., merchandise brokers, knew of the arrangement between your company, the Florida Wholesale Grocery Company, and the Dade Wholesale Grocery Company and National Brands, Inc., relative to the purchase and sale of Morton's salt?

Mr. McBride: I object to that question, Mr. Ex-
834 aminer. This witness can't testify as to what A. Earle Clark & Son knew or did not know.

Mr. Haslett: I am asking him of his own knowledge.

Mr. McBride: Of his own knowledge, he still can't testify as to what somebody else knew. That is a very consistent objectionable question, having somebody testify as to what somebody else knew.

Trial Examiner Purcell: If he had advice of it in some way or discussed it with them and they admitted they knew it, and it was a regular course of business to them, I think the question is good.

Mr. McBride: That isn't counsel's question, though. He is trying to find out from this witness what somebody else knew.

Trial Examiner Purcell: What have you to say about that, Mr. Haslett?

Mr. Haslett: Well, I don't think it is worth a great deal of argument. I will be glad to reframe the question, Mr. Examiner.

Trial Examiner Purcell: All right.

By Mr. Haslett:

Q. Have you at any time advised A. Earle Clark & Son, Inc., merchandise brokers for Morton Salt Company, of the arrangement between your company and the National Brands, Inc., and Dade Wholesale Grocery Company,
835 relative to the sale and purchase of Morton's salt?

A. Well, the only time that they knew about it is where we place an order. You see, they haul their own merchandise, they send their own trucks down there at times, that is where the orders come in there. You see, we don't deliver to National Brands or Dade Wholesale. You see, some accounts, now, we sell stuff that we don't deliver, and then when the merchandise comes in on the dock or to the broker's warehouse, we just call up that particular broker and authorize him to deliver so many cases of merchandise to certain people. Now, that is how they ought to know.

Q. And the Dade Wholesale Grocery Company would send its own trucks to the dock or to the siding where the car or boat is situated, and haul the salt from that place to their particular warehouse?

A. That is correct, sir.

Q. And have you any other customers of the type of Dade Wholesale Grocery and National Brands, Inc.?

A. Well, occasionally we have. We sell sometimes to other jobbers like Hill Groceries, Inc., Standard Wholesale and Economy Wholesale, Chitty & Company, Morton's round package free running salt. I don't remember offhand, we sell them anything they want to buy from us, I mean, if we have got anything they need, they call us up

and send their truck down to our warehouse, or at
836 times if we haven't got it at the warehouse, and we have got some stuff on the dock, we let them go down to the dock.

Q. But do you recall whether or not you have sold them any Morton round package free running blue label salt?

A. To whom?

Q. To any of the customers you just named.

A. Well, maybe. I wouldn't say no, or I wouldn't say yes. If they may be short, they will call us up, and we will make arrangements to give them some. We always do that.

Q. I hand you a document marked as Commission's exhibit 89-H, and ask you to state what is meant by the phrase thereon, if you know, sir: "To be shipped from the producer's plant," whether that was a shipment to the Dade Wholesale Grocery Company and National Brands, Inc., or direct to the Florida Wholesale Grocery Company? I would like for you to clear that up, sir.

A. Well, it appears the Dade Wholesale, National Brands, and Florida Wholesale, so all I can say is, it was shipped to these people.

Q. I see, then it was to be shipped from Morton's plant to those people, is that correct, sir?

A. Well, it says that clearly on here.

Mr. Haslett: I think that is all.

Mr. McBride: No further questions, Mr. Examiner.

Mr. Haslett: That is all, sir, thank you.

837 (Witness excused.)

Mr. Haslett: May we have a short recess, Mr. Examiner?

Trial Examiner Purcell: A five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over, come to order.

Mr. Haslett: Mr. Examiner, I would like to recall to the stand Mr. Goldberg for just one question.

Trial Examiner Purcell: Witness is recalled and has been heretofore sworn.

GEORGE GOLDBERG was thereupon recalled as a witness for the Commission, having been previously sworn, and testified further as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Goldberg, I hand you Commission's exhibit 88-L, and ask you to state whether or not the figures that appear thereon were prepared by an employee of the Florida Wholesale Grocery Company?

A. Yes, sir.

Q. And they reflect the records and files of the Florida Wholesale Grocery Company?

A. Yes.

838 Q. And they are true and correct, as far as you know?

A. As far as I know, yes.

Q. And they were prepared under your general supervision?

A. Well, they know the procedure, the people in charge, the man who is in charge of the office, he knows what to do.

Q. But he is under your supervision?

A. Oh, yes, anything he don't know, he comes to me.

Mr. Haslett: That is all.

Mr. McBride: That is all, no questions.

(Witness excused.)

Mr. Haslett: I will call Mr. Applebaum, of the Standard Wholesale Grocery Company.

IRVING R. APPLEBAUM was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, please?

A. Irving R. Applebaum.

Q. And where do you reside, sir?

A. 4321 Northwest Drive, Miami Beach.

Q. And that is in the state of Florida?

A. Yes.

839 Q. And what business are you engaged in, Mr. Applebaum?

A. Wholesale grocery business.

Q. And how long have you been in the wholesale grocery business?

A. Since 1926.

Q. With what company are you connected, sir?

A. The Standard Wholesale Grocery Company.

Q. And where is that company located, sir?

A. 137-169 Northeast 10th Street, Miami.

Q. What position do you hold with that company, sir?

A. President.

Q. And what is the business of the Standard Wholesale Grocery Company?

A. General wholesale grocery business.

Q. You sell groceries and allied products to the retailer customers?

A. That is correct.

Q. Have you any competitors?

A. Yes, we do.

Q. Would you name some of them, please, sir?

A. Florida Wholesale Grocery Company, National Brands, Inc., Dade Cash & Carry, Economy Cash & Carry, Hill Brothers, Chitty & Company—is that enough?

Q. Yes. Are they all located in Miami, Florida?

A. Yes, they are.

840 Q. Does your company handle and purchase salt?

A. Yes.

Q. Does it purchase salt from the Morton Salt Company?

A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. In the greater part, their blue package free running iodized and plain.

Q. Do you purchase any bulk salt at all, sir?

A. Occasionally.

Q. Do you purchase on the carload basis?

A. No.

Q. How do you effectuate your purchases?

A. We participate in the pool car shipments with other wholesalers.

Q. And do you get the carload price?

A. We don't know of any carload price.

Q. You don't get any discount on that pool car purchase, do you?

A. Not for the purpose of buying in a pool car, no.

Q. Is the Standard Wholesale Grocery Company a corporation?

A. The Standard Wholesale Grocery Company is a corporation.

Q. Has it any branches at all, sir?

A. Yes.

Q. Where are they located?

841 A. Two in Miami and one in Ft. Lauderdale, Florida.

Q. And are all of the purchases made through a central purchasing office?

A. Yes.

Q. And where is that purchasing office located?

A. Northeast 10th Street.

Q. And that is the office that your office is in?

A. Yes.

Q. Do you do the purchasing for the various branches of the Standard Wholesale Grocery Company?

A. Yes, I do.

Q. What price does your company pay the Morton Salt Company for the round package free running blue label salt per case?

A. The list price is $1.50.

Q. Does your company receive any discount or allowance from the Morton Salt Company?

A. We receive a 10-cent per case, 5,000 quantity rebate, if we make the 5,000 cases within a specified twelve months.

Q. And have you purchased 5,000 cases in any twelve consecutive months' period?

A. Yes.

Q. And when was that done, sir?

A. Well, we purchased 5,000 cases for the first time within 12 months this past year, in the period ended just a few weeks ago.

842 Q. And have you received your check or your credit memorandum from the Morton Salt Company?

A. Not yet.

Q. But you are hoping to receive it, sir?

A. We expect to.

Q. Prior to the time that you made this quantity limit

in order to be eligible for the 10 cents per case allowance, did you receive any allowance from the Morton Salt Company on your purchases of Morton's free running and iodized salt?

A. No.

Q. And my following question is to be confined to the period from June 19, 1936 up until January 1, 1941, in order that the record may be clear. Could you state approximately how many cases your company purchased from the Morton Salt Company during any 12 consecutive months' period?

A. Between two and three thousand cases.

Q. Between two and three thousand cases?

A. Yes.

Q. But you have now increased that to 5,000?

A. Yes, sir, we have.

Q. Does your company sell any of Morton's products to its competitors?

A. Not enough for me to remember, if any.

Q. It would just be sporadic if such a thing did occur?

A. Less than that.

843 Q. When your company was purchasing approximately 3,000 cases of Morton's free running and iodized salt, it did not receive a discount on those purchases?

A. No, it did not.

Mr. Haslett: Mr. Reporter, I hand you three documents and ask that they be marked for identification as Commission's Exhibits No. 90-A, B, and C.

(The documents referred to were marked "Commission's Exhibits 90-A, 90-B, and 90-C" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated by and between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibits No. 90-A and 90-B is a true and correct invoice of the Morton Salt Company, numbered 74207, under date of October 20, 1941, of commodities sold to the Standard Wholesale Grocery Company of Miami, Florida?

Mr. McBride: Correct.

Mr. Haslett: And that the document marked for identification as Commission's Exhibit No. 90-B, is a true and correct copy of the order numbered 2486 of A. Earle Clark & Son, Inc., merchandise brokers, Miami, Florida, under date of October 14, 1941, and that the document marked for

identification as Commission's Exhibit No. 90-C is an instruction statement of A. Earle Clark & Son, Inc., 844 under date of October 30, 1941?

Mr. McBride: The last one being to the Bull Steamship Line?

Mr. Haslett: That is right, sir.

Mr. McBride: That is correct.

Mr. Haslett: I offer them, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be marked by the reporter as Commission's Exhibit 90-A, B, and C in evidence.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 90-A, 90-B, and 90-C" were received in evidence.)

By Mr. Haslett:

Q. Mr. Applebaum, I hand you Commission's Exhibit No. 90-A, B, and C, and ask you to state whether Commission's Exhibit No. 90-A is typical of the invoices passing between the Morton Salt Company and the Standard Wholesale Grocery Company for Morton's round package free running and iodized salt?

A. Yes, it is typical.

Q. And the document marked as Commission's Exhibit No. 90-B is typical of the orders of the A. Earle Clark & Son, Inc., of commodities sold to the Standard Whole-
845 sale Grocery Company by that broker?

A. Yes.

Q. And the document marked as Commission's Exhibit No. 90-C is the instructions to the Bull Steamship Company from the A. Earle Clark & Son, Inc., brokers, of Morton Salt?

A. That is correct.

Q. What is the resale price of Morton's round package free running salt charged by your company to its retailer customers?

A. Through the Standard Wholesale Grocery on a regular delivered basis, $1.65. Through our cash and carry branches, $1.55.

Q. I see. Where your customers come and get it at the cash and carry branches, why, they pay $1.55 for it?

A. That is right.

Q. And the differential between $1.55 and $1.65 is to cover the cost of delivery?

A. That is correct.

Q. Does your company have any retail stores associated with it, sir?

A. No.

Q. Does your company receive any allowances or discounts of any type other than the 10 cents per case discount from the Morton Salt Company?

A. No, sir.

846 Q. Do you do any promotional or advertising work for the Morton Salt Company?

A. No, except to advertise it on our cash and carry specials for our own benefit.

Q. Would your business be affected by the fact that a competitor of your company sold Morton's round package blue label free running and iodized salt to your customers at a 2-cent differential in price under the price that you were offering to sell Morton's blue label round package free running and iodized salt, for, sir?

A. I believe it would.

Q. And is your business affected by the fact that some of your competitors pay $1.40 for a case of Morton's free running and iodized salt, while at the same time you were paying $1.50 for the same type of salt?

Mr. McBride: Mr. Examiner, I object to that for reasons previously indicated.

Trial Examiner Purcell: Same ruling, and exception is reserved.

The Witness: It was affected at that time, but now that we do get that 10 cents per case quantity allowance, there is no one affected by it.

By Mr. Haslett:

Q. Because you purchase at the same price as your competitors?

847 A. That is right.

Trial Examiner Purcell: That question is directed to that period prior to the last year?

Mr. Haslett: That is right, sir.

Trial Examiner Purcell: When did the year expire, Mr. Witness, that you qualified for the 5,000 case basis?

The Witness: It expired a few weeks ago. I don't know the exact date.

Trial Examiner Purcell: Approximately the middle of April?

The Witness: About the beginning or the middle of April, yes.

By Mr. Haslett:

Q. Have you received any communication from the Morton Salt Company in notifying you that you had qualified as a quantity buyer?

A. No, we haven't.

Q. You were basing your statement upon your own records?

A. And the records are submitted to us by the A. Earle Clark & Sons, Inc.

Q. And A. Earle Clark is Morton's broker?

A. That is right.

Mr. Haslett: I think that is all, Mr. McBride, your witness.

848 *Cross-Examination by Mr. McBride.*

Q. Mr. Applebaum, I believe you testified that prior to the 12 months' period ending just a few weeks ago, during which period you purchased 5,000 cases or more of the blue package, that you purchased approximately two or three thousand cases per year, is that correct?

A. That is right.

Q. Did you purchase about the same quantity each year from 1936 on through 1940 or 1941?

A. I believe so.

Q. It didn't materially increase or decrease, but remained approximately the same, is that correct?

A. I think so.

Q. You testified, also, I believe, Mr. Applebaum, that your price is $1.65 delivered from your delivery warehouse, is that correct?

A. I think so.

Q. How long has that published price been in effect?

A. We don't have that as a published price.

Q. Has that been the price that you have been offering that for the last several years?

A. Yes, it has.

Q. And your $1.50 on the cash and carry houses, has that been in effect approximately for the last several years?

849 A. Oh, no, only since we started on the 5,000 case price.

Q. How long have you had these cash and carry houses?

A. Well, we have had one for—this is the fourth year, and we have opened two this year.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Applebaum, just a couple more questions. During the past 12 months' period, has any single branch of the Standard Wholesale Grocery Company purchased 5,000 cases of Morton's free running and Morton's iodized salt?

A. You will have to state that a little more clearly.

Q. I believe you stated you had several branches?

A. Cash and carry branches.

Q. That is right, did any single cash and carry branch purchase 5,000 cases of Morton's free running and iodized salt?

A. From whom?

Q. From Morton.

A. The cash and carry branches don't purchase anything. The Standard Wholesale Grocery Company main office does all the purchasing and we distribute our purchases among all of the branches.

Q. Then, all of the branches combined purchased 5,000 cases of Morton's free running and iodized salt through
850 the Standard Wholesale Grocery Company, is that correct?

A. Yes, sir.

Q. But no single one purchased or resold 5,000 cases to the retailer customers?

A. No, sir.

Mr. Haslett: I think that is all, sir.

Trial Examiner Purcell: Does that include your branch in Ft. Lauderdale?

The Witness: Ft. Lauderdale branch has only been opened about five months and it is included in these figures.

Mr. McBride: Mr. Examiner, I will have two or three more questions, if I may.

Trial Examiner Purcell: Very well, sir.

Recross-Examination by Mr. McBride.

Q. What was the price per container of Morton's free running blue label salt in your cash and carry houses prior to your qualification period?

A. The average price was $1.60 in the cash and carries. We never did put it on special, because of the price limitation.

Q. Now, on these branches that you referred to, do all shipments of salt to the Standard Wholesale Grocery Company come to you here in Miami?

A. Yes.

Q. Pursuant to orders placed through its principal office?

851 A. Yes.

Q. And then any distribution made to the branches is made by your own company with its own trucks or by its own arrangements?

A. That is right.

Mr. McBride: That is all.

Redirect Examination by Mr. Haslett.

Q. You stated, Mr. Applebaum, that you don't put it on special, due to the price limitation. What did you mean by that?

A. Well, prior to our working on the 5,000 case quota, we weren't very much interested in pushing the sale of it. We had no goal to establish, but since we got into this agreement to sell 5,000 cases a year, we have at times cut the price as low as $1.48 or $1.49 a case to push the sale of Morton salt when we became overstocked.

Q. You sold it under cost, but you were paying for it, is that correct?

A. No, not under our arrangement with Morton, it wasn't under our cost.

Q. You are talking about the last 12 months' period?

A. Yes.

Q. I see, sir. So, the reason for the increase in the sales of Morton salt was to become eligible for this
852 discount, is that correct?

A. Well, we had agreed to become eligible for it, regardless, but we put the sales on in order not to become

overstocked, and not to have to carry over a stock of Morton's salt when our period was up.

Q. When you put the sales on, you sold it at $1.48 and $1.49 per case?

A. Yes, sir.

Q. And why did you do that, sir?

A. It materially increased the sale of Morton salt.

Q. And by increasing the sale of Morton salt, you became eligible for this 10-cent rebate, is that correct, sir?

A. Well, we became eligible to start with because we agreed to buy 5,000 cases, and then it was up to us to dispose of it.

Q. Who did you have that agreement with?

A. A. Earle Clark & Son, Inc., told us about the arrangement and we just went ahead with it.

Q. You told them you were going to try to qualify for that?

A. We told them we would qualify.

Q. Did you purchase exactly 5,000 cases, or a few cases over or a few cases under?

A. It is not under, I know we did get 5,000 or over.

Mr. Haslett: I think that is all.

Mr. McBride: No further questions.

Mr. Haslett: Thank you very much, Mr. Applebaum.

854 Mr. Haslett: I will call Mr. Hill, of Hill Brothers, Inc.

EDWIN H. HILL was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Hill?

A. Edwin H. Hill.

Q. And where do you reside?

A. 870 N. W. 7th Avenue, Miami, Florida.

Q. And what business are you engaged in?

A. Wholesale grocery business.

Q. And how long have you been in that business?

A. Since 1922.

Q. And what company are you connected with?

A. Hill Brothers, Inc.

Q. And where is Hill Brothers, Inc., located?

A. 1920 N. W. Second Court, Miami, Florida.

855 Q. Does the Hill Brothers, Inc., have any branches?

A. One in West Palm Beach.

Q. One in West Palm Beach, Florida?

A. Yes, sir.

Q. And what is the business of Hill Brothers, Inc.?

A. Buying and selling food products to retail grocers, hotels and restaurants.

Q. And among those food products would be salt?

A. Yes, sir.

Q. And has your company any competitors?

A. Yes.

Q. Would you name some of them in the Miami area?

A. Florida Wholesale Grocery, National Brands, Inc., Standard Wholesale Grocery, Economy Wholesale Grocery, Dade Cash & Carry.

Q. And have you any competitors in West Palm Beach, Florida?

A. Yes, Cheney Brothers in West Palm Beach.

Q. Any other competitors there, sir?

A. No, sir.

Q. Would Pittman Brothers be a competitor?

A. No, sir, I don't think so. I think they devote most of their attention to tobaccos and specialties; however, they may handle some food products.

Q. You don't know whether or not they handle any salt?

856 A. No, sir, I do not.

Q. Does your company purchase any of its salt requirements from the Morton Salt Company?

A. Yes.

Q. And what type of salt does it purchase from the Morton Salt Company?

A. In packages and bulk salt.

Q. Does it purchase free running and Morton's iodized salt?

A. Yes, sir.

Q. And in addition thereto, it purchases bulk salt, that is, in 100 pound sacks?

A. Yes.

Q. Does it purchase any Kleer, table salt?

A. Yes, sir.

Q. That is the square package, isn't it?

A. Yes.

Q. Does your company purchase on a carload basis?

A. I am not sure that we do. I don't happen to do the buying of our salt.

Q. How does it place orders for its requirement of salt?

A. Well, A. Earle Clark, the broker here, usually takes care of our requirements, checks our stock and sees what our needs are and sends it to us.

Q. I see.

A. We don't sign any orders or place any orders,
857 rarely ever. They have permission from us to ship us our normal requirements.

Q. Now, are the cars containing this salt placed on your own siding or on the siding of some other competitor or on the siding in the yard?

A. We have no siding at our warehouse.

Q. You do not have?

A. No; I don't know where the cars are placed. Our shipping department has charge of that, and could give you more information than I could.

Q. Do any of the salt requirements come by boat?

A. Well, they have in times past, but not at the present.

Q. Does your company receive any discounts or allowances from Morton Salt Company upon its purchases?

A. Yes, 10-cents a case.

Q. That is on the free running and iodized salt?

A. That is right.

Q. And how is that paid to your company by the Morton Salt Company?

A. Once a year.

Q. In the form of a check?

A. A credit memorandum.

Q. A credit memorandum?

A. Yes.

Q. And the credit memorandum is deducted from
858 the accounts owing to the Morton Salt Company?

A. That is correct.

Q. What is the resale price charged by your company to its retailer customers?

A. An average of about $1.65 a case.

Q. Does your company sell any of its products to its competitors?

A. At times we do. We don't solicit that business. If

they are short of merchandise, we will accomodate them by selling them at times, and sometimes we loan it to them.

Q. I see, it is mostly on an accomodation basis?

A. Exactly.

Q. And it is not to make a profit?

A. No, sir.

Q. I believe you stated that you had a branch in West Palm Beach?

A. Yes, sir.

Q. Does the branch at West Palm Beach purchase 5,000 cases of Morton's free running salt within any 12 consecutive months' period?

A. I don't think so.

Q. Would your main office here handle the purchases for the branch, and also the main office?

A. Yes, sir.

Q. And the 5,000 cases is a combined business of 859 both the West Palm Beach branch and the Miami office?

A. That is correct.

Mr. Haslett: Mr. Reporter, would you mark this document for identification as Commission's Exhibit No. 91.

(The document referred to was marked "Commission's Exhibit 91" for identification.)

By Mr. Haslett:

Q. Mr. Hill, I hand you a document that has been marked for identification as Commission's exhibit 91, and ask you to describe that document?

A. This is an invoice from the Morton Salt Company, Chicago, Illinois, dated January 27, 1941.

Q. Has it a number, sir?

A. Invoice No. 26621.

Q. And does it represent commodities sold by the Morton Salt Company to the Hill Brothers, Inc.?

A. Of West Palm Beach, Florida, yes.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's Exhibit No. 91.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 91" was received in evidence.)

860 By Mr. Haslett:

Q. Mr. Hill, I again hand you Commission's exhibit No. 91, and ask you to state whether that document represents the purchase of a carload of salt?

A. I imagine it would be. I think this is the total correct weight here. What is the weight of a car of salt?

Q. That shows 60019 pounds, doesn't it?

A. That is my understanding.

Q. And does it show any discount on the carload basis, sir?

A. No, sir.

Q. It just shows the list price?

A. The net list price, as I understand it.

Trial Examiner Purcell: What kind of salt is represented by that invoice?

Mr. Haslett: Well, all types of salt, Kleer fine, Kleer "C" grade, Kleer table salt, Morton's sausage seasoning, Morton's sugar cure salt, and Morton's free running salt.

Trial Examiner Purcell: Thank you.

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's exhibit No. 92-A and B.

(The documents referred to were marked "Commission's Exhibit 92-A and 92-B" for identification.)

By Mr. Haslett:

861 Q. Mr. Hill, I hand you what has been marked for identification as Commission's exhibit 92-A and B, and ask you to describe, if you will, Commission's Exhibit 92-A.

A. Invoice from the Morton Salt Company, Chicago, Illinois, dated February 21, 1941, No. 31470.

Q. Was that commodity shipped to the Hill Brothers, Inc., of Miami, Florida?

A. Of Miami, Florida.

Q. Now, will you describe the document marked for identification as Commission's exhibit 92-B?

A. A bill of lading from the Morton Salt Company, Grand Saline, Texas, dated 2-21-41, consigned to Hill Brothers, Inc., Miami, Florida.

Mr. Haslett: I offer the documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and

marked by the reporter as Commission's Exhibit No. 92-A, and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 92-A AND 92-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Hill, I hand you now Commission's exhibit No. 92-A and B, and ask you to state whether or not the
862 document represented as Commission's exhibit No. 92-A represents a carload purchase of salt by the Hill Brothers, Inc., of Miami, Florida, from the Morton Salt Company?

A. Yes, it represents a total of 45,450 pounds, which I assume to be a carload.

Q. Did you receive any discount on the carload basis?

A. No, sir.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 93.

(The document referred to was marked "Commission's Exhibit 93" for identification.)

By Mr. Haslett:

Q. Mr. Hill, I hand you a document that has been marked for identification as Commission's exhibit No. 93, and I will ask you to describe it, if you will, sir.

A. This is an invoice from the Morton Salt Company, Chicago, Illinois, dated February 10, 1941, invoice No. 29142.

Trial Examiner Purcell: Invoice number what?

The Witness: 29142.

Mr. Haslett: I offer this document.

Trial Examiner Purcell: Any objection?

Mr. McBride: None, except this pencil memorandum, Mr. Examiner.

Trial Examiner Purcell: What is your position with
863 regard to the pencil memorandum, Mr. Haslett?

Mr. Haslett: I offer the document as to its printed and typewritten contents, and not as to any pencil notation that may appear thereon.

Trial Examiner Purcell: It may be received in evidence and marked by the reporter as Commission's exhibit No. 93.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 93" was received in evidence.)

By Mr. Haslett:

Q. Mr. Hill, I hand you herewith Commission's exhibit No. 93 and ask you to state whether that document represents the purchase of a full carload of salt?

A. I am not in a position to make that statement.

Trial Examiner Purcell: What is that?

The Witness: I am not in a position to make that statement, because I don't know what the weight consists of here.

By Mr. Haslett:

Q. The weight doesn't show on there, does it?

A. No, sir. I don't know whether it is a full car or a part car.

Trial Examiner Purcell: Is there any indication in the amount of the invoice in dollars and cents?

The Witness: No, sir, that would not indicate 864 whether it would be a car or not, unless we had the exact weight.

Mr. Haslett: Mr. Reporter, will you mark these two documents as Commission's exhibit No. 94-A and B.

(The documents referred to were marked "Commission's Exhibit 94-A and 94-B" for identification.)

By Mr. Haslett:

Q. Mr. Hill, I hand you Commission's Exhibit No. 94-A for identification, and ask you to describe it.

A. This is a credit memorandum from the Morton Salt Company, Chicago, Illinois, dated January 20, 1942, No. 72175.

Q. Is it directed to the Hill Brothers, Inc.?

A. To Hill Brothers, Inc.

Q. Miami, Florida?

A. Miami, Florida.

Q. And I hand you a document that has been marked for identification as Commission's Exhibit No. 94-B, and ask you to state what that is, if you know, sir?

A. This is a record of our total sales beginning January, 1941, throughout December, 1941, for Hill Brothers, Inc., Miami, Florida, totalling 5,849 cases; West Palm Beach branch 1135 cases, making a grand total of 6,984 cases.

Mr. Haslett: I offer Commission's Exhibit 94-A and B for identification in evidence.

Mr. McBride: No objection.

865 Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked by the reporter as Commission's exhibit 94-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 94-A AND 94-B" were received in evidence.)

Mr. Haslett? Mr. Reporter, will you mark this document for identification as Commission's exhibit No. 95?

(The document referred to was marked "Commission's Exhibit 95" for identification.)

By Mr. Haslett:

Q. Mr. Hill, I hand you what has been marked for identification as Commission's Exhibit 95, and ask you to describe it, if you will, sir?

A. This is a credit memorandum from the Morton Salt Company, Chicago, Illinois, to Hill Brothers, Inc., Miami, Florida, dated January 15, 1941, No. 64925.

Mr. Haslett: I offer Commission's Exhibit 95 for identification into evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's exhibit No. 95.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 95" was received in evidence.)

866 By Mr. Haslett:

Q. Mr. Hill, do you know how long your company has been receiving the 10-cents a case discount from the Morton Salt Company?

A. No, sir, I do not.

Q. Has it been for some time?

A. Several years.

Q. Does your company receive any other discounts or allowances other than the 10-cents per case discount from the Morton Salt Company?

A. No.

Q. That is the only allowance or discount it does receive?

A. Yes.

Q. Does the Hill Brothers, Inc., have any retail stores associated with it?

A. No, sir, not legally.

Q. Would your business be affected by the fact that a competitor of your company was selling or offered to sell Morton's round package free running salt at a 2-cent differential in price under the price that your company was charging for the salt of the same shape, grade and quality?

A. Yes, sir.

Q. Is your business affected by the fact that some of your competitors pay $1.35 for a case of Morton's free running and iodized salt, while at the same time you
867 pay $1.40 for it?

A. Yes, sir.

Mr. McBride: Mr. Examiner, I object to that question.

Trial Examiner Purcell: He has answered. You have your exception.

By M. Haslett:

Q. What effect would it have on your business if one of your competitors was receiving a discount of approximately 5-cents on the invoice price of a carload basis and you were not getting it on a carload basis?

A. It would give him a decided advantage. He would have a longer margin of profit, which he could use to sell merchandise for less money than we could.

Q. Do you do any specialty missionary work for the Morton Salt Company to promote the sale of its branded products?

A. That is kind of a hard question to answer, inasmuch as we don't handle any other salt in packages at all. Naturally, I would say yes to that question.

Q. Is that work done at the direction of the Morton Salt Company?

A. No, sir.

Q. It is done on your own behalf?

A. That is exactly right.

Q. In other words, to promote the sale of Morton's products?

868 A. Yes, and eliminate the duplication of brands.

Q. Did your company ever operate a branch at Tampa, Florida?

A. No, sir.

Q. I believe you stated you resell Morton's round package salt generally at $1.65 a case?

A. Yes, sir.

Q. Have you any other price for it, sir?

A. Only as competition demands.

Q. Well, have you any customers that you sell Morton's round package free running salt at $1.50 per case?

A. Yes.

Q. And what are the names of those customers, if you know, sir?

A. I couldn't tell you the names of them.

Q. But you do have some customers that you sell at $1.50.

A. None other than the wholesalers or competitors as we spoke of in the beginning, where we would loan salt at times, or any other commodity, and we would also expect them to return that favor when we were in need of the same goods.

Q. I believe you misunderstood me, Mr. Hill. I mean, any retail customers?

A. No retail customers, no, sir.

Q. Have you any retailer customers that you sell Morton's round package free running salt to at less than
869 $1.65 per case?

A. Yes, sir.

Q. And what would be the price that you would resell your salt for?

A. It might be $1.55 or $1.60.

Q. Why do you sell it at $1.55 to some customers?

A. Competitive reasons.

Q. What would be some of those reasons?

A. Some other wholesale grocer would probably cut our price from $1.65 down to $1.60, and we would meet that price in order to hold our business.

Q. And you would have to meet it to hold your business?

A. That is exactly right.

Q. What would happen if you didn't meet it?

A. We would probably lose the business.

Q. Would the same answer be true as to customers paying $1.60 for it?

A. The same answer would be true.

Q. For the same reasons?

A. For the same reasons, applying to all merchandise, whether it be salt or other merchandise.

Q. Do you know approximately the dollar volume of your purchases of salt by your company from the Morton Salt Company during, we will say, the year 1941?

A. No, sir, I do not.

870 Mr. Haslett: I think that is all, Mr. McBride, your witness:

Cross-Examination by Mr. McBride.

Q. Mr. Hill, I believe you testified with respect to Commission's exhibit No. 92-A that you thought that was a full car shipment there?

A. Yes.

Q. Judging from the weight shown on the invoice and the bill of lading, is that correct?

A. Yes, sir.

Q. And also with respect to Commission's exhibit No. 91?

A. Yes, sir.

Q. You stated with respect to both of those shipments, covered by those two invoices, that you knew of no carload discount that was received by your company?

A. That is right.

Q. Well, Commission's exhibit No. 91, as you testified, is dated January 27, 1941. Do you recall, Mr. Hill, what the less than carload price of the various items of salt shown on that invoice were at the date of that invoice?

A. No, sir, I do not.

Q. Do you recall what the carload price was of those items as of the date of that invoice?

A. No, sir.

871 Q. So that from your recollection, it is possible that the invoice known as Commission's exhibit No. 91, shows a carload basis on which there was a discount off of the regular price list of Morton Salt Company for those items, is that right?

A. That is right.

Q. And you wouldn't say there had not been a discount for carload basis figured into your extension on your invoice?

A. No, sir, I would not say that.

Q. And would that be true, also, Mr. Hill, with respect to the items shown on Commission's exhibit 92-A, which you testified to was dated February 21, 1941?

A. Yes, sir.

Q. So that as far as you know, the quantity discount may have been taken out for carload shipments, and the effect of it reflected in the extended price?

A. That is right.

Q. I believe you testified, also, Mr. Hill, that depending upon your competitors' resale price, that that would govern to some extent what your resale price would be to the retailers?

A. That is right.

Q. So that actually the price that your competitors pay for the salt would have no bearing on your business, but rather the resale price, is that right?

872 A. No, the price that he pays for the merchandise would have some bearing.

Q. Suppose he offered the salt at the same price you were offering it at, at $1.65?

A. Well, suppose he made a profit on that sale and I didn't?

Q. When you buy, and sell at $1.65?

A. Because he bought it for less money. He could sell it at my cost and still have a profit.

Q. I am not trying to say what he would do, I am saying, supposing one of your competitors offered salt at $1.65, which is the same price at which you were offering salt, that wouldn't affect your business, would it?

A. Not in the least bit.

Q. Regardless of what he pays for it, as long as it was offered at that basis?

A. You mean, regardless of the price he bought it at?

Q. That is right, I am speaking now of the resale price; it is the competitor's resale price that determines your actions, isn't that correct?

A. That is right, the resale price.

Q. The resale price to the customers of the wholesalers who operate in your territory?

A. Yes, sir.

Q. How many items does your wholesale house carry?

873 A. I should imagine about 2500.

Q. I take it, that is about the same number that the average wholesale house in this territory would carry?

A. I think so.

Q. I suppose that at no given time would all of the prices on all 2500 products of all the wholesalers in this area be the same?

A. No, they wouldn't.

Q. As I understand the wholesale business, your prices

are at all different levels on all different products, and all different quality, isn't that correct?

A. That is correct.

Q. Now, in your business, Mr. Hill, do you have what you might term regular retail accounts?

A. Consumer accounts or retail grocery accounts?

Q. Retail grocery accounts.

A. Yes, sir.

Q. I am not speaking now of other wholesalers.

A. Yes, sir.

Q. Do you have, to a large degree, the same retail accounts from time to time over a period of years?

A. Well, to a large degree, but there is quite a turnover in new accounts each year.

Q. That is always true in any wholesale business?

A. Old customers going out of business and new
874 customers opening up.

Q. But your business would depend pretty largely on your company being pretty well in line on all prices on all 2500 items?

A. That is exactly right.

Q. And variations slightly one way or another on one item might have no effect on your business as long as your general resale picture was in line with the competitive prices on all lines?

A. That is correct.

Q. And it is true, also, isn't it, in the wholesale business in your case and the case of other wholesalers, that they may feature for a day or a week, a particular item, a sack of potatoes or a sack of flour or a case of peas?

A. That is correct.

Q. As a lead or a bait, we will say, to get the retail business?

A. That is correct.

Mr. Haslett: I object to this line of cross-examination. It is beyond the scope of direct examination, and has reference to items not under investigation at this time. We are dealing only with the sale of salt, and the prices charged and prices paid, and not on potatoes and other items, whether or not this customer's business has been affected by the sale of salt at other prices.

875 Mr. McBride: If the Examiner please, an abstract question was asked the witness and he gave an abstract answer. I am not criticising the witness, but I think

I am entitled to explore and see what effect this 2-cent differential, so-called, may have. In order to get the scope of the picture, I am entitled to put in the picture of the whole business as it is operated. It is entirely appropriate that I be not stymied or bound by one question or one answer that counsel for the Commission has seen fit to ask this witness.

Mr. Haslett: Mr. Examiner, surely counsel doesn't take the position that he is entitled to go into the prices and the resale prices of 2500 items that this particular witness handles. We are only interested in salt in this particular instance.

Trial Examiner Purcell: Mr. Haslett, I don't think counsel is going into the details of the resale of 2500 different items. I think, however, that he is, in justice to his client, entitled to inquire into the general conduct of the wholesale business. I am going to overrule the objection, sir.

Mr. Haslett: And I take an exception to the Examiner's ruling and reserve my right to present the matter to the Commission.

Trial Examiner Purcell: Yes, it is the identical
876 question that has been up before, and which you likewise reserved your right. I understand, sir. You may inquire.

By Mr. McBride:

Q. About how many salesmen do you have on the average in your business, Mr. Hill?

A. About eight.

Q. And they are out among the retail buyers soliciting their business for your company?

A. Yes, sir.

Q. As I understand your business, you deliver and do not operate on a cash and carry basis?

A. Yes, we deliver.

Q. You will extend credit terms if necessary to accounts that pass your credit department, is that correct?

A. Yes, sir.

Q. So that you offer those services in addition to the merchandise itself to your retailers?

A. Yes, sir.

Q. Now, when your salesmen go out among the retail trade, they don't solicit just one particular item; for in-

stance, they don't make a round of all the retailers and solicit peas on Monday and potatoes on Tuesday, but they will go in and solicit a full line of groceries, isn't that right?

A. That is correct.

Q. And it is the endeavor of these salesmen in your
877 firm to deliver to a retailer as full a line of groceries as they can on each order?

A. That is correct.

Q. So that wouldn't it be true, Mr. Hill, that if, for example, you presented your prices on a full line of commodities to a given retailer, and he were to go through that list, that he may not pay too much attention to the relative prices of particular items that you offer with the relative prices of particular items which your competitors offer, but rather whether the list on the whole will give him a fair advantage on the purchase price from your company?

Mr. Haslett: I object to that, Mr. Examiner. I must insist upon my objection to this line of testimony. First, that it is way beyond the scope of the direct examination, and how in the name of all that is good and holy can that particular question have anything to do with the issues in this case, where a salesman goes in and solicits a list of a thousand different items, twenty-five hundred different items, whether or not that affects the salt business? This isn't on investigation of this witness, of this customer of the Morton Salt Company. This is a hearing before the Federal Trade Commission. The Commission is interested in facts, not in opinions of what would happen. I must insist upon that objection, Mr. Examiner. I think it is highly prejudicial to the Commission's case.

878 Mr. McBride: It strikes me, Mr. Examiner, that Mr. Haslett has been quite interested in opinions, and not much more today.

Trial Examiner Purcell: Well, we will do away with personalities, Mr. McBride. I ruled in your favor, sir, because I thought that you should be permitted to go into that phase of the question, but it seems to me that you are about reaching the limit of it. I will respectfully request that you—

Mr. McBride: (Interrupting.) I will withdraw the last question, Mr. Examiner.

Trial Examiner Purcell: All right.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Hill, just one or two questions and then we will let you go. Referring now to only salt, isn't it a fact, or is it a fact, that your business would be affected by the fact that one of your competitors was paying $1.35 for a case of Morton's salt, while at the same time you were paying $1.40 for it, no matter what you were selling it at?

Mr. McBride: Mr. Examiner, I will have to make my usual objection to it, and I suppose I can add the additional reasons now that it is opinion evidence. I am not endeavoring to be facetious, but I point that out, in
879 addition to my other reasons on that same question in the previous hearings.

Trial Examiner Purcell: Mr. McBride, of course, I am overruling your objection, you understand, and I will answer your last objection by saying that you were very solicitous on your own part to elicit on your cross-examination the opinion of the witness on the identical question, so I think you are estopped from raising that at this time.

The Witness: Yes, it would affect my business if my competitors were buying salt cheaper than I was buying it.

By Mr. Haslett:

Q. Mr. McBride has inquired into the general business of the wholesale grocery trade. What effect would it have on your business if one of your competitors was buying all items at 10-cents cheaper than you were paying for them?

Mr. McBride: I object to that question, Mr. Examiner, for the reasons previously indicated.

Mr. Haslett: The answer is obvious anyway.

Trial Examiner Purcell: I guess ruling is not necessary, according to that.

Mr. Haslett: I will withdraw the question.

By Mr. Haslett:

Q. If one of your competitors was buying all of its products cheaper than what you were paying for them, you couldn't stay in business, could you?

880 A. Not long.

Mr. McBride: I object to that, too, Mr. Examiner.

Trial Examiner Purcell: I will uphold the objection.

It is in the same form as the preceding one, on which you said no ruling was necessary, because the answer was absolutely obvious.

Mr. Haslett: That is all, Mr. Hill, thank you very much, sir.

(Witness excused.)

Mr. Haslett: I will call Mr. Marshburn to the stand, please.

ROBERT J. MARSHBURN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you please state your full name for the record, please, Mr. Marshburn?

A. Robert J. Marshburn.

Q. And where do you reside, sir?

A. 1801 Espanola Drive, Miami.

Q. And in what business are you engaged, sir?

A. Chain grocery.

Q. And with what company are you associated?

881 A. Margaret Ann Super Markets, Inc.

Q. And what position do you hold with that company?

A. President.

Q. And how long have you been president?

A. Twenty-two years.

Q. And does the Margaret Ann Super Markets operate any retail grocery stores?

A. They do.

Q. Would you tell us the geographical territory where such stores are operated, sir?

A. We operate 42 stores from West Palm Beach south to Homestead, and on the west coast of Florida, Sarasota, Bradenton, St. Petersburg, Clearwater, Tampa, Orlando, Winter Haven, Gainesville, DeLand, Ocala, and that is all.

Q. All of those stores are operated within the state of Florida?

A. They are.

Q. Is Margaret Ann a corporation?

A. It is.

Q. And under the laws of what state was it incorporated?

A. The state of Florida.

Q. How long has the company been operating under the name of Margaret Ann Super Markets?

A. About six months.

Q. What was the name of the company prior to that time?

882 A. Southern Food Stores, Inc.

Q. And was there any change in the corporate structure of the organization?

A. It involved the change of name only.

Q. The capital stock and the personnel remained the same?

A. It did.

Q. Has Margaret Ann any competitors, sir?

A. Yes.

Q. Would you name some of your larger competitors?

A. Table Supply Stores, Winn-Lovett, A&P Tea Company. They are the principal ones.

Q. And in addition to those larger competitors, there are a great number of small independently retailer owned stores that operate grocery stores on the corners in various territories where Margaret Ann operates?

A. Yes, sir.

Q. And they are competitors of Margaret Ann, also?

A. Yes, they are.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. And does it make any purchases from the Morton Salt Company?

A. Yes, we do.

Q. And will you tell us how those purchases are made, and through what medium are orders placed with the

883 Morton Salt Company by your company?

A. We operate two distributing warehouses, the main one being in Miami and the other one being in Tampa. We have a buyer at each one, Mr. Bexley, W. W. Bexley, has been the buyer in Miami, and Mr. Glen Bradley in the Tampa unit. We purchase in Miami through the brokerage firm of A. Earle Clark. I do not know the name of the brokerage firm in Tampa.

Q. And you place orders with these various brokers of the Morton Salt Company, as a result of which commod-

ities are shipped to you by the Morton Salt Company, is that correct?

A. That is correct.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Free running and iodized.

Q. Do you purchase any other type of salt from the Morton Salt Company?

A. We may, but not in quantities.

Q. Do you handle what is known as the 5-cent salt in your store?

A. I couldn't answer that question.

Q. Does your company purchase salt from the Morton Salt Company on a carload basis?

A. I think we have in the past.

Q. What was the price that your company paid for 884 Morton round package blue label free running and iodized salt?

A. $1.50.

Q. Per case?

A. Per case.

Q. Does your company receive any discount or allowance of any kind from the Morton Salt Company upon its purchases?

A. We receive a quantity discount for 5,000 cases or over.

Q. And how much is that discount, sir?

A. Ten-cents a case.

Q. And is that 10-cents for each case of Morton's free running and iodized salt purchased by your company during any particular period?

A. During a 12 months' period.

Q. What is the retail price charged by your company for its round package blue label free running and iodized salt to the consumer?

A. That varies.

Q. What do you mean when you say varies, the price varies?

A. Yes, sir, we may sell it cheaper than the regular price on special sales, and at times to meet special competition.

Q. You say, at times it varies and you sell it for less than 10-cents a package to the consumer?

A. Yes, sir.

Q. And I believe you stated that one of the reasons was competition?

885 A. Yes.

Q. What do you mean by competition?

A. On staple items, we make it a practice of meeting competition. In other words, we won't permit our stores to be undersold on staple items.

Q. Is Morton's salt a staple item?

A. Morton's salt would be considered in this territory a staple item.

Q. And why do you meet the price of your competitors?

A. In order to maintain our volume.

Q. And if you didn't meet it, what would happen?

A. Our volume would slip.

Q. And when you say slip, you mean, that you would be injured?

A. I mean that we would lose volume, and naturally would be injured, yes.

Q. Has the price of $1.50 that your company pays the Morton Salt Company for its round package free running and iodized salt been in effect for a long time, sir?

A. Yes.

Mr. Haslett: Mr. Reporter, I hand you herewith eight documents and ask that you mark them for identification as Commission's Exhibit No. 96-A to H, inclusive.

(The documents referred to were marked "Commission's Exhibit 96-A, 96-B, 96-C, 96-D, 96-E, 96-F, 96-G and 96-H" for identification.)

886 Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 96-B is an invoice of the Morton Salt Company under date of January 6, 1941 to the Southern Food Stores, Inc., at Tampa, Florida, invoice No. 22,320; that document marked for identification as Commission's Exhibit 96-C is a purchase order of Southern Food Stores, Inc., No. 13,504, under date of December 21, 1940; that the document marked for identification as Commission's Exhibit 96-D is a bill of lading of the Morton Salt Company to the Tampa Brokerage Company consigned to Southern Food Stores, Inc., under date of January 1, 1941; that the document marked for identification as Commission's Exhibit 96-E is a credit memorandum No. 64,769, passing between the

Morton Salt Company of Chicago, Illinois and the Southern Food Stores, Inc., of Tampa, Florida; that the document marked for identification as Commission's Exhibit No. 96-F is a letter from Ashby Cameron of the Morton Salt Company to Mr. H. A. Ballinger of Tampa, Florida, under date of January 17, 1941; that document marked for identification as Commission's Exhibit 96-G is a credit memorandum from the Morton Salt Company, numbered 64,993, to the Southern Food Stores of Miami, Florida, under date of January 16, 1941, and that the document
887 marked for identification as Commission's Exhibit No. 96-H is a break-down of sales made by the Morton Salt Company to the Southern Food Stores for January, 1940 to January, 1941, to the Miami and Tampa branches?

Correction, Mr. Examiner, Commission's Exhibit 96-D is not a bill of lading, but an acknowledgment of an order.

Trial Examiner Purcell: An acknowledgment of an order?

Mr. Haslett: Yes, sir. It is so stipulated, Mr. McBride?

Mr. McBride: It is.

Mr. Haslett: I offer the documents in evidence, Mr. Examiner.

Trial Examiner Purcell: How about 96-A?

Mr. Haslett: I am not offering that, sir.

Mr. McBride: Just one moment, Mr. Examiner. I stipulated with Mr. Haslett, and I have no objection other than with respect to the pencil notations on Commission's Exhibit for identification No. 96-B.

Trial Examiner Purcell: 96-B?

Mr. McBride: That is correct.

Trial Examiner Purcell: And what is your answer to that, sir?

Mr. Haslett: I was just getting ready to clear it
888 up, sir. I offer the documents Mr. Examiner, for the contents contained thereon, except Commission's Exhibit for identification 96-B, and I offer that for the typewritten and printed matter that appears thereon.

Trial Examiner Purcell: There being no objection, the instruments described as Commission's Exhibit 96-B, C, D, E, F, G, and H, will be received in evidence.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 96-B, 96-C, 96-D, 96-E, 96-F, 96-G and 96-H" were received in evidence.)

By Mr. Haslett:

Q. Mr. Marshburn, I hand you now Commission's Exhibit No. 96-H, and ask you to state whether the Southern Food Stores, Inc., of Miami and Tampa, Florida, purchased during a 12 consecutive months' period, 5,000 cases of Morton's free running salt?

A. I can't answer that question.

Q. Did the Southern Food Stores, or the Miami branch of that company, purchase during January and February, March, April, May, June, July, August, September, October, November and December of 1940, 5,000 cases of Morton's free running salt if you know, sir?

A. No, sir, they did not.

Q. Did the Tampa branch of the Southern Food Stores, Inc., purchase during the period that was just specified, that is, from January through December of 1940, 5,000 cases of Morton's free running and Morton's iodized salt?

889

A. They did not.

Q. Does the fact that some of your competitors receive a 15-cent discount per case on Morton's blue package free running and iodized salt, while at the same time you receive a 10-cent discount per case, affect your business in any way?

Mr. McBride: If the Examiner please, I object to that question, for reasons indicated with respect to the question on the $1.40-$1.50 purchase. I think that was sufficiently defined, to identify the reasons for my objections.

Trial Examiner Purcell: Same ruling.

The Witness: If they did receive that advantage in buying, naturally it would affect it very adversely.

By Mr. Haslett:

Q. Would the business of the Margaret Ann Stores be affected by the fact that one of your competitors was selling Morton's round package free running salt direct to the consumer at 6-cents per package, while the Margaret Ann was selling the salt of the same type, grade, and quality, at 10-cents per package?

A. Yes, it would have a bad effect.

Q. Would your business be affected in any way by the fact that some of your competitors were receiving a discount of approximately 5 per cent off the invoice price based on a carload purchase, while at

889A

the same time you were buying from the Morton Salt Company and receiving no discount?

Mr. McBride: If the Examiner please, I object to that for reasons previously indicated with respect to the 15-cents.

Trial Examiner Purcell: Same ruling.

The Witness: It would have effect.

By Mr. Haslett:

Q. Would it be an adverse effect?

A. Adverse, yes.

Q. Now, if one of your competitors was receiving an additional approximately 5 per cent discount over and above the carload discount we have been talking about, on his purchases from the Morton Salt Company, would that in any way affect your business?

Mr. McBride: Same objection.

Trial Examiner Purcell: Same ruling. You may answer.

The Witness: It would make it even worse.

By Mr. Haslett:

Q. I believe you stated that the A&P Tea Company was a competitor of Margaret Ann Stores?

A. They are.

Q. And you encounter the competition of A&P 890 wherever your stores are located?

A. Almost in every locality.

Q. Does the American Stores Company operate in Miami?

A. They do not.

Q. How about the National Tea Company?

A. Neither do they.

Q. Safeway Stores, Inc.?

A. No.

Q. None of those three operate here?

A. No, they do not.

Q. The Great Atlantic & Pacific Tea Company is the only interstate competitor that you have, and when I say interstate, that is operating in other states other than the state of Florida?

A. Winn-Lovett operates interstate.

Q. And their principal place of business is at Jacksonville?

A. That is right.

Q. Does your company do any specialty missionary

work to promote the sale of Morton's round package or Morton's free running and iodized salt?

A. We do no wholesale business whatever.

Q. Well, in your retail work, do you do any specialty or missionary work to promote the sale of Morton's products?

A. With the consumer, yes.

Q. And is that done at the instance of your own
891 company, or is it done at the instance of the Morton Salt Company?

A. We do it at the instance of our own company.

Q. Has Morton Salt Company ever offered to furnish you with promotional activity in connection with the resale of its products?

A. Not to my particular knowledge. However, they probably do from time to time through their broker assist us in featuring their salt through displays in our stores.

Q. You say, that has happened?

A. I don't from my own knowledge, know, but I make that statement knowing their brokerage representative here. He makes that a practice to his accounts.

Q. Does the Morton Salt Company furnish your company with any medium of advertising to be used in connection with the resale of its products?

A. Not that I know of.

Q. Do you receive any advertising allowances, discounts, or rebates from the Morton Salt Company, other than the 10-cents per case discount that we have been talking about, sir?

A. No.

Q. Do you know approximately the dollar volume of salt purchased by your company from the Morton Salt Company during a 12 consecutive months' period, in dollar volume?

A. It would be approximately $8,000 or $9,000.

892 Q. How long was the Southern Food Stores, Inc., in existence prior to the time that its name was changed to Margaret Ann?

A. About seven or eight years.

Q. And I believe you stated that the name was changed in the latter part of 1941?

A. That is correct.

Q. That did not affect any of the practices and policies of the company itself?

A. None whatever.

Mr. Haslett: I think that is all, Mr. Marshburn. Mr. McBride, he is your witness.

Mr. McBride: I have no cross examination, Mr. Examiner.

Mr. Haslett: That is all, Mr. Marshburn, thank you very much.

(Witness excused.)

Mr. McBride: Mr. Examiner, I request that I be permitted to withdraw Commission's Exhibit numbers 88-A to 96-H, inclusive, to be photostated and the originals thereafter returned.

Trial Examiner Purcell: Granted.

894 Federal Court Room,
Federal Building,
Miami, Florida,
Tuesday, May 5, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

895 Mr. Haslett: I will call as my first witness, Mr. Miller.

JACK MILLER was thereupon called as a witness for the Commission, having been first duly sworn, and testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you please state your full name for the record, Mr. Miller?

A. Jack Miller.

Q. And where do you reside?

A. 2855 Fairgreen Drive.

Q. Is that in the city of Miami?

896 A. Miami Beach.

Q. Miami Beach, Florida?

A. Yes.

Q. In what business are you engaged?

A. Wholesale grocery business.

Q. And how long have you been in the wholesale grocery business?

A. Going on 17 years.

Q. And with what company are you connected?

A. National Brands, Inc.

Q. And where is that company located?

A. 690 N. W. 13th Street, Miami.

Q. Is it a corporation, sir?

A. Yes, sir.

Q. And under the laws of what state was it incorporated?

A. The state of Florida.

Q. What position do you hold with that company?

A. Vice-president.

Q. And how long have you been vice-president?

A. Approximately four or five years.

Q. How long have you been with National Brands, Inc.?

A. Since we started the company, in 1925.

Q. In 1925?

A. Yes.

Q. Has the National Brands, Inc., any branches?

897 A. One in West Palm Beach.

Q. Is that the only branch?

A. That is right.

Q. And are the purchases made for that branch through the Miami office?

A. That is right.

Q. Has National Brands, Inc., any competitors?

A. Yes, a few.

Q. Would you name some of them, please, sir?

A. Standard Wholesale Grocery, Florida Wholesale Grocery, Hill Brothers, Consolidated and Economy.

Q. Are they all located within the city of Miami?

A. That is right.

Q. Does your company purchase or handle salt?

A. We do.

Q. And does your company make any purchases for its requirements from the Morton Salt Company?

A. We do.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. A round package weighing a pound and ten ounces.

Q. I see, a 26 ounce round package?

A. Twenty-six ounces.

Q. And what other types?

A. Sometimes we buy some bulk salt, or a few other
898 items, but mainly the round package 26 ounce salt.

Q. And do you know the price which your company pays for the round package blue label salt?

A. $1.50 a case.

Q. How long has your company been purchasing from the Morton Salt Company?

A. We have been purchasing since 1927 or 1928, I don't remember the exact date.

Q. What is the price that your company charges for the round package blue label free running salt to your retailer customers?

A. Our book price is $1.70.

Q. Your book price is $1.70?

A. That is right.

Q. The business of the National Brands, Inc., is selling wholesale groceries and allied products to the retailer customers?

A. That is right.

Q. Does it sell any of its products to any of its competitors?

A. Whenever they want to purchase anything.

Q. But it is not the general policy?

A. No, sir.

Q. Have you always purchased your requirements of Morton salt direct from the Morton Salt Company?

899 A. Not always.

Q. How did you obtain your requirements of Morton's round package free running salt at the time that you weren't purchasing it direct from the Morton Salt Company?

Mr. McBride: If the Examiner please, I object to that question. We have here a case involving the Morton Salt Company and its sale of products. I assume, obviously, that counsel for the Commission can inquire as to the relationship between the witness' company and the Morton Salt Company. Other than that, I don't think that further

inquiry as to where he buys his commodities, salt or otherwise, is germane to the issues of this case.

Mr. Haslett: Of course, I don't agree with counsel's conclusion. We are interested here in this proceeding in the method and procedure with which this witness has obtained his supply of Morton's salt, whether direct from the Morton Salt Company or through some other method or manner.

Mr. McBride: One further thing, Mr. Examiner: We have no control over National Brands or any other company. They are customers on the open market, like anybody else. Accordingly, we offer our products, respondent offers its products, and over and beyond the offering and the sale of the respondent's products to its customers, there is nothing further pertinent to this case.

900 Trial Examiner Purcell: I will overrule your objection.

Mr. McBride: I make my usual reservation, Mr. Examiner.

By Mr. Haslett:

Q. Do you want the question re-read, Mr. Miller?

A. Yes.

(The question referred to was read by the reporter.)

A. I was purchasing from the Florida Wholesale Grocery Company.

Q. And what price were you paying for the round package free running and iodized salt from the Florida Wholesale Grocery Company?

A. They were billing it to me at $1.50 a case, but at the end of the year as many cases as I bought off of them, they would refund me 10 cents a case.

Q. Why did you purchase from the Florida Wholesale Grocery Company?

Mr. McBride: If the Examiner please, to make the record clear, I object to this entire line of testimony, and I should like to have my objection noted with respect to the entire line of questioning to avoid the constant repetition of objecting.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

901 Q. You may answer.

A. What was that question?

Q. I say, why did you purchase your requirements of Morton's round package free running and iodized salt from the Florida Wholesale Grocery Company?

A. Because I was saving 10 cents a case by buying it through them.

Trial Examiner Purcell: Speak up louder, Mr. Witness.

The Witness: I was saving 10 cents a case by purchasing it from them.

By Mr. Haslett:

Q. Couldn't you purchase direct from the Morton Salt Company and get the same price?

A. Yes, provided I purchased a certain amount of cases during the year, which I wasn't able to purchase.

Q. And on your purchases of the quantity less than required by the Morton Salt Company from the Florida Wholesale Grocery Company, you received a 10 cent discount per case?

A. That is right.

Q. So, you were able to purchase it from the Florida Wholesale Grocery Company cheaper than you could from the Morton Salt Company?

A. That way yes.

Q. Approximately how many cases of Morton's 902 round package free running salt did you purchase per year from the Florida Wholesale Grocery Company?

A. I would have to look up my records to be able to answer that.

Q. You couldn't estimate it, sir?

A. I think I purchased off of them about 2,000 cases, approximately; I am not sure of that.

Q. You would say approximately 2,000 cases per year?

A. Yes, sir.

Q. Do you now purchase direct from the Morton Salt Company?

A. I do.

Q. And how long have you been purchasing direct from the Morton Salt Company?

A. Since around December, 1941.

Q. Since December, 1941, your requirements—

A. I have been purchasing merchandise except the round package.

Q. Where do you purchase your round package now, sir?

A. Now, since December, I have been purchasing it from the Morton Salt Company.

Q. And do you receive any discount on the purchases of the round package free running salt since December, 1941?

A. No, except if I should make the required amount of cases they ask me to, they would refund me 10 cents a case.

Q. Do you know approximately how many cases you 903 have purchased since December, 1941?

A. I think I have the records right there, 1,050 cases.

Q. So, your figure of approximately 2,000 cases per year would be on an average of what you did purchase?

A. Approximately that.

Q. How do you place your orders at the present time for your requirements of Morton's round package free running salt?

A. Through a broker, A. Earle Clark & Son.

Q. And does he come to your office to solicit your business?

A. He does.

Q. And you give him an order, as a result of which commodities are shipped to you by the Morton Salt Company?

A. That is right.

Q. Are they shipped in cars or in boats?

A. They were shipped at a time, I believe, when the boats were running, they were shipped by boat. They might be shipped by rail, I don't know that.

Q. Did you ever purchase a full carload of salt from the Morton Salt Company?

A. No.

Q. Your cars come in pool cars?

A. That is right.

Q. What do you mean by a pool car?

A. All of the other jobbers besides myself or the 904 wholesalers, combine their orders with the brokers, and they make up a car that way. They pool the orders into a carload, and we each draw our requirements.

Q. At the time that you were purchasing your requirements of salt, of Morton's salt, from the Florida Wholesale Grocery Company, did you receive your 10 cent discount per case every three months, six months, or every year?

A. Every year.

Mr. McBride: If the Examiner please, now, there I wish to raise a special objection. Counsel has used the inference words "purchasing his requirements through Florida Wholesale". I previously raised my objection about the purchases of this company, this witness' company, from Florida Wholesale. The Examiner has overruled my objection on that, but now counsel's questions are directed in terms of buying through Florida Wholesale. Now, I ask that the question be stricken unless he confines his questions to purchases by this company from Florida Wholesale without reference to using that company as a conduit or using any open inference on the record.

Mr. Haslett: Mr. Examiner, that is a question which I don't want to concede counsel at this time. It may develop that the Florida Wholesale Company was an agent of the Morton Salt Company and acted as such. I think it is a question of fact which should be presented to the Com-
905 mission to let it decide.

Trial Examiner Purcell: That may be true, but I think the objection is well taken, Mr. Haslett. It doesn't lie with you to infer that at this time. Suppose you reframe your question, sir, so as to meet counsel's objection, and if it becomes a fact in the future, all right, then, it may be proved in proper course.

Mr. Haslett: Instead of reframing my question, I would like the Examiner to make a definite ruling on the question, and I will take an exception.

Trial Examiner Purcell: All right, then, I will sustain the objection.

Mr. Haslett: And I will note an exception to the Examiner's ruling, and reserve my right to present it to the Commission.

By Mr. Haslett:

Q. Mr. Miller, at the time you were making your purchases of Morton salt, and having your commodities delivered to you by the Florida Wholesale Grocery Company, and at which time you were receiving a 10 cent discount per case, did you receive that discount on a quarterly, semi-annually or annual basis?

A. Annual.

Q. How long was the arrangement in effect with the Florida Wholesale Grocery Company whereby you ob-
906 tained your requirements?

A. Approximately a year.
Q. Approximately one year?
A. Yes, sir.
Q. Prior to the time that this arrangement was in effect, how did you obtain your requirements of Morton's round package free running salt?
A. Through the Morton Salt Company.
Q. At the time the arrangement was effectuated, did you discuss this matter with the broker of the Morton Salt Company?
A. No.
Q. Did you at any time advise him of the arrangement between your company and the Florida Wholesale Grocery Company?
A. I advised the agent that I was going to stop purchasing Morton's salt from them, as I had a way of getting it some place else.
Q. At a cheaper price?
A. That is right.
Q. Would the fact that one or more of your competitors was purchasing Morton's salt at the present time at $1.40 per case for its round package free running salt, while at the same time you were paying $1.50 per case for the same type of salt, same grade and quality, have any effect
907 on your business?

Mr. McBride: If the Examiner please, I make my usual objection, for the usual reasons, to that question.

Trial Examiner Purcell: Same ruling.

Mr. Haslett: You may answer, sir.

The Witness: Yes, if my competitor can purchase Morton salt cheaper than I can purchase it, it does make a difference to my business.

By Mr. Haslett:

Q. And would that be an adverse difference?
A. It would.
Q. And what effect would it have on your business if one of your competitors were selling Morton's salt at a 2-cent differential in price under the price which you were charging for Morton's salt of the same grade and quality?
A. If I wanted that man's business well enough, I would meet my competitor's price. If I didn't, I would pass it up.
Q. Why would you meet it?
A. To get the business.

Q. If you didn't meet it, you would lose the business?
A. I don't know that I would lose all of the business, but I would lose some of it.
Q. Would your business be affected in any way by the fact that one of your competitors was getting a discount of approximately 5 per cent over and above the car-
908 load price that is usually charged by Morton Salt Company for its products?
Mr. McBride: Mr. Examiner, my usual objection with reference to the $1.40 purchase questions, for the same reasons.
Trial Examiner Purcell: Same ruling. You may answer.
The Witness: Let me get that question.
Mr. Haslett: Read the question, Mr. Reporter.
(The question referred to was read by the reporter.)
The Witness: It would affect my business.

By Mr. Haslett:

Q. Have you any other price other than the $1.70 resale price that you charge for your Morton's round package free running salt?
A. Yes, we meet competition on Morton's salt.
Q. Why do you meet competition, sir?
A. To keep our prices in line with our competitors.
Trial Examiner Purcell: Is that responsive?
Mr. Haslett: No, it is not. I am going to develop it a little more, sir.

By Mr. Haslett:

Q. Why do you want to keep your prices in line with your competitors?
A. So I can get my share of the business.
909 Q. And if your prices weren't in line with your competitors, you wouldn't get your share of the business?
A. I don't believe I would.
Q. Your business would be affected?
A. That is right.
Q. Have you any retail owned stores associated with your company?
A. No, sir.
Q. You sell only at wholesale?
A. That is right.

Mr. Haslett: It is stipulated between counsel representing the respondent here and counsel for the Commission that invoices similar to and identical with Commission's exhibit No. 87, except as to the quantity of the product, date, number of the invoice, consignee and designation, have passed between the respondent, Morton Salt Company, and National Brands, Inc., of Miami, Florida, who is a customer of the respondent, Morton Salt Company, and that Commission's exhibit No. 87 is typical of such invoices for the sale of salt of the same type that appears thereon that pass between the respondent herein and its customer, National Brands, Inc., of Miami, Florida, and that such invoices have, in the regular course of the respondent's business, passed between the respondent and its said customer,
National Brands, Inc., of Miami, Florida, since the
910 respondent began the sale of, and the said customer,
National Brands, Inc., began the purchase of the type of product as appears on Commission's exhibit No. 87.

Is it so stipulated, Mr. McBride?

Mr. McBride: It is, with respect to all sales of Morton Salt Company to National Brands, Inc.

Mr. Haslett: I think that is all, your witness, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. I only have one or two questions, Mr. Miller. I believe you testified that on the purchases which you made from the Morton Salt Company, the goods moving pursuant to those purchases moved to Miami by what you termed a pool car?

A. That is right.

Q. Now, in making up those pool cars, you have nothing to do with making up the pool cars, do you? It simply comes in in a car along with shipments to other customers in this territory, isn't that correct?

A. You mean, that this car is shipped to somebody else? I don't get that quite right.

Q. No. Let me clarify my question. The pool car is actually made up by the Morton Salt Company broker here in Miami, isn't that correct?

911 A. That is right.

Q. And they simply tell you what car your salt is coming in on, isn't that correct?

A. No, they give us an order when that car comes in, by Mr. Clarke, or Mr. Heenan, from A. Earle Clark & Son, Inc., gives us an order on the warehouse, and we send our truck down to pick up the salt. We don't know the car or the car number.

Q. You have nothing to do with making up the car?

A. Not a thing, nothing whatsoever.

Mr. McBride: That is all.

Redirect Examination by Mr. Haslett.

Q. Just one other question, Mr. Miller. You are not now receiving any discount or allowance from the Morton Salt Company?

A. No, unless I make a specified amount of cases at the end of the year, I am not receiving any discount whatsoever.

Q. Is your business affected by the fact that one of your competitors sold Morton's round package free running salt to retailer customers of the Miami area at $1.48 a case, while at the same time you were selling it at $1.60 a case?

A. That is right.

Mr. McBride: If the Examiner please, I object to that question. There is absolutely nothing in the record
912 that shows that those two prices were in simultaneously. The entire assumption is made in counsel's question.

Trial Examiner Purcell: You mean that they were not at any time in actual competition with each other?

Mr. McBride: No, I think the Examiner will understand my point if the reporter will read the question back. There is a statement of fact in counsel's question which is not in the record at all, and I object to a question being framed in that fashion.

Would you read the question back to the Examiner, Mr. Reporter?

Mr. Haslett: If I did present a statement of fact in the framing of my question, it was unintentional, and I didn't mean to do so, so if the reporter will read it back, I will reframe the question.

Trial Examiner Purcell: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

Mr. McBride: Now, if counsel wants to ask an abstract question, that is something else.

Trial Examiner Purcell: There is testimony in the record, however,—I still was right on my first interpretation of his point,—there is testimony in the record that the salt was sold at $1.48 a case, but there is no testimony in the
913 record that it was sold at that time in competition with Mr. Miller's salt at $1.60.

Mr. McBride: That is correct.

Trial Examiner Purcell: Well, that is what I said the first time.

Mr. McBride: I am sorry.

Trial Examiner Purcell: I will sustain the objection.

By Mr. Haslett:

Q. Mr. Miller, how long have you been in competition with Standard Wholesale Grocery Company?

A. I believe ever since we both started in business, and that was back in 1925.

Q. And you are still in competition with them?

A. That is right.

Q. And you are selling Morton's round package free running salt in competition with Standard Wholesale Grocery Company?

A. That is right.

Q. Is your business affected by the fact that Standard Wholesale Grocery Company has sold salt within the last 12 months' period to the retailer customers in the Miami area at $1.48 a case, while at the same time you were charging a higher price for the salt of the same grade and type?

A. It is.

Mr. McBride: If the Examiner please, I object to that question. If I recall the testimony at all, there may
914 have been a statement in the record that they might have on sporadic occasions salt at $1.48, but the time, place and circumstances were not identified, and once again counsel has made a statement of fact not warranted by the record.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. Mr. McBride, I am going to overrule your objection, sir, and allow you an exception.

Mr. McBride: Thank you.

By Mr. Haslett:

Q. Adversely?

A. That is right.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: Any recross?

Mr. McBride: I don't believe so, Mr. Examiner.

Mr. Haslett: Thank you very much, Mr. Miller.

(Witness excused.)

Mr. Haslett: I will call as my next witness Mr. Bullman.

DOUGLAS BULLMAN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. State your full name for the record, please, sir?

A. Douglass Bullman.

Q. And where do you reside, sir?

A. 434 S. W. 24th Road, Miami.

Q. Is that in the city of Miami?

A. It is.

Q. And in what business are you engaged?

A. I am grocery buyer and warehouse superintendent for the Economy Wholesale Grocery Company.

Q. And what is the Economy Wholesale Grocery Company?

A. Wholesale grocers.

Q. Do they sell groceries and allied products at wholesale to the retailer customers?

A. Yes, they do.

Q. And where is the Economy Wholesale Grocery Company located?

A. Our main office is at 1134 N. W. 22nd Street.

Q. In the city of Miami?

A. In the city of Miami.

Q. Has it any branches?

A. We have a branch at 1160 N. W. 22nd Street, Miami, and 408 East 17th Street, West Palm Beach.

Q. Do you have any other branches in any other cities?

916 A. Yes, we do have.

Q. Would you name those, please?

A. I will have to refer to my list. They are not operated from Miami.

Q. I see.

A. We have branches in Tampa, St. Petersburg, Lakeland, Orlando, Ocala, Daytona Beach and Jacksonville.

Q. Now, is the main office of the Economy Wholesale Grocery Company located in Miami, Florida?

A. In Miami, Florida.

Q. And what position do you hold with that company, sir?

A. Grocery buyer for this district.

Q. And will you describe for us your duties as a grocery buyer?

A. There are a multitude of them.

Q. Well, in general outlines, sir?

A. We have a stock record that we keep up. In other words, when the stock gets down to a certain point, we place orders for merchandise to replenish it, and—well, how much more do you want, all duties?

Q. Do you place orders with the various processors and manufacturers of commodities to be shipped to the various branches of the Economy Wholesale Grocery Company?

A. The two branches in Miami, and West Palm Beach only.

Q. And who handles the buying for the other branches?

917 A. That is handled in our Tampa office.

Q. In your Tampa office?

A. Yes, sir.

Q. Does your company have any competitors?

A. Yes.

Q. Would you name some of those competitors, please, sir?

A. In Miami there are Hill Brothers, Standard Wholesale Grocery, Florida Wholesale Grocery, National Brands, Inc., Consolidated Cash & Carry, Dade Wholesale Cash & Carry, and there are others.

Q. And does your company have any retail stores associated or affiliated with it, sir?

A. We don't own any retail stores, no. The Economy Wholesale Grocery Company does not.

Q. There is no corporate or legal connection between your company and any retailer stores?

A. Not the Economy Wholesale Grocery.

Q. Do you handle the purchasing of salt from the various salt processors?

A. Yes, sir.

Q. Does your company purchase salt from the Morton Salt Company?

A. We have purchased from the Morton Salt Company.

Q. Does it do so at the present time?

A. No, sir, we do not.

918 Q. When did you stop purchasing from the Morton Salt Company?

A. In December, 1940.

Q. And how do you obtain your requirements of Mortons' round package free running salt at the present time, sir?

Mr. McBride: If the Examiner please, I make the same objection as I did to the line of inquiry with respect to National Brands regarding where it buys its commodities. We are trying in this case, presumably, and I amplify again, only Morton Salt Company as the respondent.

Trial Examiner Purcell: Objection overruled.

The Witness: Through the Winn-Lovett Grocery Company.

Trial Examiner Purcell: Through the what?

The Witness: Through the Winn-Lovett Grocery Company.

By Mr. Haslett:

Q. Where is the Winn-Lovett Grocery Company located?

A. Jacksonville, Florida.

Q. And they place orders for your company with the Morton Salt Company, as a result of which commodities are shipped to you by the Morton Salt Company?

A. No, sir, we give the order to the local brokers.

Q. To the local brokers?

A. That is right.

919 Q. When you say the local brokers, you mean Morton's local brokers in Miami?

A. Yes, sir.

Q. And what is that name?

A. A. Earle Clark & Son, Inc.

Q. And are you billed directly by the Morton Salt Company?

A. No, the salt is billed to the Winn-Lovett Grocery Company.

Q. And you pay the Winn Lovett Grocery Company?

A. Yes, sir.

Q. Does your company now handle Morton's round package free running and iodized salt?

A. We do.

Q. And does it handle any other types of salt processed by Morton?

A. Not to my knowledge.

Q. What price does your company now pay for Morton's round package free running and iodized salt per case?

A. $1.50.

Q. Does your company receive any discounts or allowances of any sort on its purchases of Morton's round package free running and iodized salt?

Mr. McBride: If the Examiner please, I want counsel to identify that. There is a mixture of various periods of who purchased from whom here.

920 Mr. Haslett: I think it will clear itself up.

Mr. McBride: I want the question clear now.

Trial Examiner Purcell: Are you objecting?

Mr. McBride: I am objecting to the question.

Trial Examiner Purcell: Objection overruled.

The Witness: We are supposed to receive a refund. That we actually have, I do not know.

By Mr. Haslett:

Q. How much are you supposed to receive?

A. Ten-cents per case.

Q. What is the resale price of Morton's round package free running and iodized salt charged by your company to its retailer customers?

A. That could vary. Ordinarily, it is $1.55 per case, although we run specials at times.

Q. Does your company publish a price list?

A. Yes, we do.

Q. Does the price list contain a date, if your know, sir?

A. Yes, I have one right here.

Mr. Haslett: Mr. Reporter, I hand you this document and ask that it be marked for identification as Commission's exhibit No. 97.

(The document referred to was marked "Commission's Exhibit 97" for identification.)

By Mr. Haslett:

921 Q. Mr. Bullman, I hand you what has been marked for identification as Commission's exhibit No. 97, and ask you to state what that is, if you know?

A. This is our printed list mailed to our retailer customers.

Q. Is that your printed price list?

A. Yes, it is.

Q. Showing the wholesale price for various articles sold by you to your retailer customers.

A. Yes.

Q. Does Commission's exhibit No. 97 contain the prices which your company charges for the various grades and brands of salt?

A. It does.

Q. And is Morton's plain and iodized salt included among those brands?

A. Yes, it is.

Mr. Haslett: I offer Commission's exhibit No. 97 for identification into evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence as Commission's exhibit No. 97, and so marked by the reporter.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 97" was received in evidence.)

922 By Mr. Haslett:

Q. Mr. Bullman, does Morton's broker in this area, Mr. Earle Clark, call upon you, or one of his representatives call upon you, to solicit the sale of Morton's round package free running salt?

A. Either in person or by telephone, yes.

Q. And how often do they make their appearance in your office?

A. It is mostly by telephone.

Q. Mostly by telephone?

A. Yes, sir.

Q. How often do they call you, once a week or twice a week?

A. I would say once in three weeks.

Q. And is that a constant occurrence, where they call

you every three weeks soliciting Morton's business from your company?

A. Yes.

Q. Who in your organization would know whether or not you have received the 10-cent discount upon your purchases of Morton's round package and free running salt?

A. C. J. Kilgore, auditor.

Q. Could you contact him over the telephone and determine when the last payment was received on purchases of Morton's round package free running salt?

A. We tried to locate one yesterday, and we were
923 unable to. Whether he has since then, I don't know.

Q. Prior to the time that you began to receive your requirements of salt, Morton's round package free running salt, through the Winn-Lovett Company, did your company receive any discount or allowance from the Morton Salt Company?

A. We did.

Q. And was that 10-cents per case, also, sir?

A. Providing we bought 5,000 cases per year.

Q. Providing you bought 5,000 cases per year, you received a 10-cent discount per case?

A. Yes, sir.

Q. And did you purchase 5,000 cases per year?

A. For the years 1939 and 1940, yes. Previous to that, I don't know.

Q. For the years 1939 and 1940, you did purchase in excess of 5,000 cases per year from the Morton Salt Company?

A. Yes, sir.

Q. And was that the combined purchases of all branches of the Economy Wholesale Grocery Company?

A. Yes.

Q. And did any single branch of the Economy Wholesale Grocery Company purchase 5,000 cases of Morton's free running salt during 1939 and 1940?

A. No, sir.

924 Q. Would your business be affected by the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price that you were offering to sell Morton's round package blue label salt for?

A. If they did it constantly, yes.

Trial Examiner Purcell: What was that?

The Witness: If they did it constantly, yes.

By Mr. Haslett:

Q. Is your business affected by the fact that some of your competitors pay $1.35 for a case of Morton's free running and iodized salt, while at the same time you pay $1.40 for the same type salt?

Mr. McBride: I object to that, Mr. Examiner, for reasons previously stated.

Trial Examiner Purcell: Same ruling. You may answer.

The Witness: I don't think it affects our business.

By Mr. Haslett:

Q. It doesn't affect your business if someone is buying it for less than you do?

A. Not unless they sold it constantly under our price.

Q. You wouldn't stay in business very long if they bought all products for less than you paid for your requirements, would you?

925 Mr. McBride: I object to that, Mr. Examiner.

Trial Examiner Purcell: Objection sustained.

By Mr. Haslett:

Q. What effect would it have on your business if one of your competitors was paying $1.30 for a case of Morton's round package salt, while at the same time you were paying $1.40 for it?

Mr. McBride: I object to that question.

Trial Examiner Purcell: Objection overruled.

The Witness: I again answer, if he sold it for less than we did, it would hurt our business.

By Mr. Haslett:

Q. The purchase price of your commodities have nothing to do with the profits which you receive on your commodities?

Mr. McBride: Now, Mr. Examiner, I object there. The question switches now to terms of profit. I can't see what relevancy that is, in light of this witness' answer. Profit is a highly tenuous matter that has something more involved that the mere purchase price, and I am not anxious to get speculative answers to speculative questions in the whole realm of economy in a wholesale business.

Trial Examiner Purcell: What do you have to say to that, Mr. Haslett?

Mr. Haslett: Well, Mr. Examiner, before this case is over, we will probably be into profits up to our necks.

926 The fact that one competitor is paying a cheaper price for commodities than the other, and the differential between that and the sale price is certainly relevant to the issues of this case. I think the question was well put and there will be a responsive answer.

Mr. McBride: If the Examiner please, if we are going to explore the question of profits, I suppose it will be within the scope of respondent's examination to inquire into the balance sheets, profit and loss statements, overhead, administrative salaries, and there is no end to that, and it seems to me that the Commission's attorney goes well beyond the scope of any conceivable issue in this case.

Trial Examiner Purcell: I think, if my memory serves me, we had the same question under discussion in New Orleans, the same objection was made, and counsel for the Commission conceded the justness of the objection by withdrawing the word "profit" and substituting for it the word "differential." Is the attorney for the Commission willing do that at this time?

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: Very well, then, there is nothing before the Examiner. Reframe your question, please.

By Mr. Haslett:

Q. Does the purchase price of commodities have anything to do with the resale price by your company of

927 the same commodities?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's exhibit No. 98-A and B.

(The documents referred to were marked "Commission's Exhibit 98-A and 98-B" for identification.)

By Mr. Haslett:

Q. Mr. Bullman, I hand you what has been marked for identification as Commission's exhibit 98-A, and ask you to state what that is, if you know, sir?

A. That is an invoice from the Morton Salt Company,

invoice No. 40209, dated December 8, 1939, to the Economy Wholesale Grocery Company, Miami, Florida.

Q. Now, will you describe for us Commission's exhibit No. 98-B?

A. That is a copy of the original delivery ticket issued to us when the salt arrived.

Q. Under what date?

A. December 20, 1939. The warehouse number is 5867.

Mr. Haslett: I offer the documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence as Commission's exhibit 98-A and B, and will be so marked 928 by the reporter.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 98-A and 98-B" were received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you another document and ask that is be marked for identification as Commission's exhibit 99-A and B.

(The documents referred to were marked "Commission's Exhibit 99-A, and 99-B" for identification.)

By Mr. Haslett:

Q. Mr. Bullman, I hand you herewith Commission's exhibits for identification 99-A, and ask you to describe it, please.

A. This is an invoice from the Morton Salt Company, No. 50390, dated December 14, 1939, to the Economy Wholesale Grocery Company, Inc., Tampa, Florida.

Q. Will you describe Commission's Exhibit 99-B for identification?

A. This is evidently a copy of the delivery ticket from the Gulf Florida Terminal Company, Tampa, Florida, No. 38507.

Q. Has it a date on it, sir?

A. December 29, 1939.

Mr. Haslett: I offer Commission's exhibit for identification 98-A and B into evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, 929 the instruments described will be received in evidence and marked by the reporter as Commission's exhibit 99-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 99-A and 99-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Bullman, are all customers of the Economy Wholesale Grocery Company in Miami sold at the same price as appears in the price list, known as Commission's exhibit No. 97?

Trial Examiner Purcell: What was that question?

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Are you confining yourself to salt?

Mr. Haslett: Yes, to salt.

The Witness: Well, our customers, are sold based on the price list, of which you have a copy.

By Mr. Haslett:

Q. You don't sell it at any price other than listed therein?

A. Not to our knowledge.

Q. Is there any legal or corporate connection between the Economy Wholesale Grocery Company and the Winn-Lovett Grocery Company?

A. No corporate connection.

Q. During the year 1941, did the Economy Whole-
930 sale Grocery Company of Miami purchase 5,000 cases of Morton's free running and iodized salt?

A. I don't positively know. I did not check the 1941 records, as we were not buying from Morton Salt Company in 1941.

Q. Your requirements were being received through the Winn-Lovett Wholesale Grocery Company in 1941, is that correct?

A. Yes, sir.

Mr. McBride: Mr. Examiner, I object to the question as framed, with the word "through," for reasons already indicated on previous questions of the same type.

Mr. Haslett: I think the Examiner has ruled on that question before.

Trial Examiner Purcell: Yes, I overruled the objection.

Mr. McBride: I think you sustained the objection, if I recall correctly.

Trial Examiner Purcell: It wasn't a question of de-

livery of goods through, that question had to do with the placing of orders with, instead of the delivery of goods through, if I remember correctly.

Mr. Haslett: That is correct.

Mr. McBride: When counsel says "through" in his question, there is some sort of an inference or assumption that we are a party to this through arrangement.

931 Trial Examiner Purcell: No, I think, perhaps, Mr. McBride, you are a little hyper-sensitive on that.

Mr. McBride: No, I don't believe so, Mr. Examiner, because the implication of that word is the idea that we must be the source of some through arrangement, and it is to that that I am objecting to that type of question.

Trial Examiner Purcell: You are the source of the product, are you not?

Mr. McBride: Certainly, we put it on the market. We discussed the thing in terms of agency, and Mr. Haslett's argument in support of his right to use that question was that maybe it will develop an agency. If that is what counsel has in mind, that is an additional reason for objecting to the question.

Trial Examiner Purcell: I am going to overrule your objection.

Mr. Haslett: I think that is all, Mr. Examiner.

Trial Examiner Purcell: Was there a question unanswered?

Mr. Haslett: No, he answered the question, I think, sir.

Cross-Examination by Mr. McBride.

Q. Mr. Bullman, you identified Commission's exhibit No. 97, I believe, as a price list of your company?

932 A. Yes.

Q. I show you that exhibit, and will you identify the date of it, for the record, please?

A. There is no date other than the effective date of the prices contained therein.

Q. What is the effective date?

A. February 23rd to March 16th.

Q. Of what year?

A. 1942.

Q. 1942?

A. Yes.

Q. The 1942, however, does not appear on the face of the list?

A. It does not appear on the face of the list, no.

Q. And then the prices appearing in this list were effective only for the intermediate period between the two dates to which you have just testified, is that correct?

A. They were effective during that period.

Q. That is right, from February 23rd to March 16, 1942, inclusive?

A. Yes.

Q. I believe you stated, Mr. Bullman, that since December, 1940, Economy Wholesale Grocery Company did not purchase its Morton's blue can requirements from Morton Salt Company or from the broker here in Miami, is that correct?

933 A. We did not purchase from the Morton Salt Company.

Q. I believe you testified that you purchased Morton's free running and iodized salt in the blue package from Winn-Lovett Company, is that correct?

A. That is correct.

Q. But you also testified that you were solicited for orders by the brokerage firm here in Miami?

A. Yes.

Q. Of Morton Salt Company?

A. Yes.

Q. Well, what was the affiliation between, or the connection between your company and Winn-Lovett Company?

A. There is no corporate affiliation.

Q. Did you instruct the Morton Salt Company to make its billings during 1940 through or to the Winn-Lovett Company for purchases made by your company?

A. Such instructions were given but I don't know who gave them.

Q. You don't know what the net result of the procedure is, is that correct?

A. Yes, sir.

Q. The Economy Wholesale Grocery Company is strictly a cash and carry wholesale grocery, is that correct?

A. We sell through cash and carry outlets.

Q. Does your company deliver?

934 A. Yes, we do deliver.

Q. Primarily, though, cash and carry, with sporadic delivery service, is that the general nature of it?

A. I didn't hear that question.

(The question referred to was read by the reporter.)

A. We do deliver, and we sell cash and carry.

Q. Both?

A. Yes.

Q. Do you extend credit to your customers, having in mind those who call at your wholesale warehouse for your products?

A. No, not as a general practice, no, sir. If there is any, it is unsanctioned, and it is not our policy to extend any credit.

Q. Where is the main office of the Winn-Lovett Company, Mr. Bullman?

A. It is in Jacksonville, Florida. It is on West Bay Street, I do not know the number.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Bullman, you stated in reply to one of Mr. McBride's questions that the price list as represented by Commission's exhibit No. 97 had been in effect only the dates that are specified thereon in 1942. How long has the price of Morton's plain and iodized salt of $1.55 been in effect?

935 A. I have a price list here for 1939, and it was in effect at that time.

Q. It was in effect in 1939?

A. To my knowledge.

Q. And it is in effect today?

A. Yes, sir.

Q. There hasn't been any change since 1939?

A. Yes, if you will notice there are specials in our list, and to state that it was $1.55 all the way through, I wouldn't know.

Q. But it is the general policy, other than when you use Morton's plain and iodized salt as a special, it remains at $1.55 a case?

A. That is right.

Q. Now, will you tell us why your company began to purchase Morton's round package blue label iodized salt through the Winn-Lovett Company?

A. Merely as a matter of convenience.

Q. A matter of convenience, will you explain that, sir?

A. Well, we had made our allotment or quota, or whatever you call it, for 1939, and we made it for 1940, but it was impossible to sell 5,000 cases in 1941. In 1941, it would be easy to make our quota without having to push it all ourselves.

Q. It would be easier to get the discount without
936 making the 5,000 purchase quota, was that the reason you began to purchase through Winn-Lovett?

A. Yes, sir.

Mr. Haslett: That is all, sir.

Trial Examiner Purcell: Any recross?

Mr. McBride: Yes, sir.

Trial Examiner Purcell: We will take a five minute recess, gentlemen.

(A short recess was taken.)

Trial Examiner Purcell: Recess is ended. Come to order, please. Continue with your recross.

Recross Examination by Mr. McBride.

Q. Mr. Bullman, I believe you testified there was no legal or corporate connection between Economy Wholesale Grocery Company and Winn-Lovett, is that correct?

A. Yes, sir.

Q. Is there any mutual officership between the two companies?

Mr. Haslett: I object to that.

Trial Examiner Purcell: Let me have that question again.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: On what grounds?

Mr. Haslett: Upon the ground, first, that it is beyond
937 the scope of direct examination. I asked if there was any legal or corporate connection. Now he is going beyond that, he says, "is there any mutual connection between the officers of both companies." What difference does it make?

Trial Examiner Purcell: Well, if it doesn't make any difference, why object?

Mr. Haslett: I object to it, and am basing my objection on the ground that it goes beyond the scope of direct examination.

Trial Examiner Purcell: I will overrule the objection. Let's get the facts. You may answer.

The Witness: I don't know. The question as put, I don't quite understand the wording.

Trial Examiner Purcell: Read the question again, Mr. Reporter.

(The question referred to was re-read by the reporter.)

The Witness: Mutual officership, no, sir.

By Mr. McBride:

Q. For the purpose of clarity, then, Mr. Bullman, is any officer of the Economy Wholesale Grocery Company also an officer of the Winn-Lovett Company?

A. No, sir.

Q. Is any director of the Economy Wholesale Gro-
938 cery Company also a director of the Winn-Lovett Company?

Mr. Haslett: I object to that.

Trial Examiner Purcell: Objection overruled.

The Witness: I don't know.

By Mr. McBride:

Q. In other words, a director of Economy Wholesale Grocery Company might be a director of the Winn-Lovett Company, as far as you know, or might not be, is that correct?

A. I couldn't answer that yes or no.

Q. Does any stockholder of Economy Wholesale Grocery Company also own stock in the Winn-Lovett Company?

Mr. Haslett: I object to that.

Trial Examiner Purcell: I will sustain the objection.

Mr. McBride: If the Examiner please, I think I am entitled to explore the connection between these two companies. Now, the witness has testified that up to December, 1940, they purchased, Economy Wholesale Grocery Company, 5000 cases or more of the blue package salt from the Morton Salt Company.

Trial Examiner Purcell: Let's get off the record, if you are going to recount the testimony, please. I don't want to run this record up.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record. I
939 will sustain Mr. Haslett's objection. You may have your exception, Mr. McBride.

By Mr. McBride:

Q. Mr. Bullman, was the decision to buy from Winn-Lovett Company your decision in 1940; were you the one who made that decision?

A. No, sir, I didn't.

Q. Who made that decision?

A. I was instructed to buy that way from our Mr. J. E. Davis.

Q. Mr. J. E. Davis, and what is his—what position does he hold with your company?

A. He is the president.

Q. He is the president of the company?

A. Yes, sir.

Q. Do you know of your own knowledge how many cases of Morton's free running and iodized blue package salt was purchased by the Economy Wholesale Grocery Company during the year 1941?

A. Not with me, no, sir.

Q. Do you make your remittances for the purchases of the blue package salt to the Winn-Lovett Company or the Morton Salt Company?

A. To the Winn-Lovett Company.

Q. At what point?

940 A. Jacksonville, Florida.

Q. Jacksonville, Florida?

A. Yes.

Q. But you place your orders, as I recall your testimony, through the Morton Salt Company broker in Miami, Florida, so far as Miami warehouses are concerned, is that right?

A. Yes.

Q. Will you explain why the orders are placed with the brokers of the Morton Salt Company, but remittances are made to Winn-Lovett Company?

A. Presumably, because they are pool cars consigned to Miami, and the orders, we understand, are all made up here by the broker, so, naturally, being in this territory, our salt would be included in their local car.

Q. Who do you mean by "their"?

A. The broker's car.

Q. Well, why would the mere fact that your orders move in a pool car, made up by the broker in Miami, have any bearing on the fact that remittances are made to Winn-Lovett Company at Jacksonville, Florida?

A. We are billed by them for the salt.
Q. By Winn-Lovett Company?
A. By Winn-Lovett Grocery Company.
Q. Was there ever at any time any connection, corporate or legal, between Economy Wholesale Grocery Company and Winn-Lovett Company?
941 A. No legal connection. There is a family connection.
Trial Examiner Purcell: What is that?
The Witness: There is a family connection, I don't know whether you consider that legal or not.

By Mr. McBride:

Q. Will you describe the family connection?
Mr. Haslett: I object to that question, sir, on the same ground, it is beyond the scope of the direct examination, and I can see no real weight that it would ever play upon determining the issues of this case by the Federal Trade Commission, what one family does and what another family does. If we get into families, we will get into communities and then into states, and other things, and it would just be an endless type of testimony.
Mr. McBride: Of course, the Examiner recognizes I am not trying to develop—
Trial Examiner Purcell: Off the record.
(A discussion was had off the record.)
Trial Examiner Purcell: Back on the record. I will sustain the objection.
Q. (By Mr. McBride.) I believe you also testified, Mr. Bullman, that you received what you typified as a discount on your blue package purchases of Morton's free running and iodized salt, is that correct?
942 A. The assumption is that we will receive it. I have no knowledge that we ever have received it.
Q. Now, what do you mean by "the assumption is"?
A. Well, we are supposed to get the 10-cents per case discount.
Q. Who are you supposed to get it from?
A. Winn-Lovett Grocery Company.
Q. By some arrangement between your company and Winn-Lovett Grocery Company?
A. Yes, sir.
Q. And what is that arrangement?
A. I didn't make it, and I wouldn't be familiar with the original deal.

Q. Was that made by Mr. Davis?

A. Presumably so. I was only instructed to buy through Winn-Lovett; I do not know who made the arrangements.

Q. So, with respect to receiving any discount for purchases of the blue package made subsequent to December, 1940, you were referring to a discount arrangement between your company and the Winn-Lovett Company, is that correct?

A. Of which I was not an original party to.

Q. And you don't know of any discount that has been paid direct to your company or any allowance of any kind by the Morton Salt Company since December, 1940, is that right?

A. No, sir.

943 Q. Mr. Bullman, is it the policy of the wholesale grocers here in Miami to offer special items, as they might be termed, from time to time?

A. Yes, it is.

Q. Those special items might be any one of a number of things in your whole list of commodities that you offer the retail trade, is that correct?

A. Yes.

Q. And you will make those special items at a special enticing price for a day or a week, or a limited period, as a means of getting additional business, is that right?

A. Ordinarily, for the duration of our printed forms, two weeks.

Q. Now, in that same connection, is it ever the practice of your company to make combination offers of a number of items on your commodity list, of which some one of those items might be a special leader or a special priced item?

A. We have done that, but it is not the regular practice; no, sir.

Q. But you have done it?

A. We have done it.

Q. And then what I would call a loss leader in that group of commodities, would be the inducement for a retailer to buy that group of commodities, is that correct?

A. Well, the whole deal would be an inducement, not 944 particularly any one item, just a combination deal.

Q. And has that been done from time to time by other wholesalers in Miami, so far as you know?

A. Yes, it has.

Q. And do you, Mr. Bullman, know whether or not Morton's free running and Morton's iodized blue package salt might from time to time be used as a loss leader, or the special item in those orders?

A. It would be, as a nationally advertised item, but whether it actually has been or not, I do not know.

Q. In other words, for those sorts of arrangements or deals or specialties, to the retail trade, you usually employ a nationally advertised item, is that right?

A. A well known brand, yes.

Q. And when they make these offers, special offers or special deals, has it been the practice on some occasions for that nationally advertised item to be offered at cost or less than cost merely as a part of the inducement to get the retail business?

A. Well, I would say right at cost, I don't know that we have been running below cost.

Q. But it might have been below cost?

A. It could have been, yes.

Q. In order to create and develop trade between that particular wholesaler and the retail market?

945 A. Yes, sir.

Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: Just one or two more questions.

Redirect Examination by Mr. Haslett.

Q. Mr. Bullman, I believe you stated that the reason your company places its orders for Morton Salt to Morton's broker here was that the product was to be shipped in a pool car to Miami, is that correct, sir?

A. That is my understanding.

Q. If you did place your orders through the Winn-Lovett Wholesale Grocery Company in Jacksonville, the commodity would be shipped to Jacksonville, and not to Miami?

A. I don't think so, it would be a round-about way to place an order, though.

Q. But you make your payments through the Winn-Lovett Grocery Company in Jacksonville, is that correct, sir?

A. To the Winn-Lovett Grocery Company.

Q. And you receive your commodities in pool cars with your competitors who purchase directly from the Morton Salt Company here in Miami, is that correct?

A. I don't know how they purchase. I know it does come in in a combination pool car to Miami.

Q. In pool cars of salt?

A. Yes.

946 Q. Do you haul the salt from the siding of the car to your warehouse?

A. Yes, sir.

Q. In your own trucks?

A. Yes, sir.

Q. And get the $1.50 carload price?

A. That is the price charged us, I believe.

Q. Is Morton's round package blue label salt a well known brand?

A. Yes, it is.

Q. A staple product?

A. Yes, sir.

Q. Superior in quality to other types of salt?

A. That would be a matter of opinion.

Q. You don't have any other salt of the same grade or the same type of package that you purchase at approximately the same price that you pay for Morton's round package salt, do you?

Mr. McBride: If the Examiner please, that is a pretty full-sized question, and I suppose has its chemical angles, and everything else, and I am afraid I will have to object to it.

Mr. Haslett: I have no objection to counsel's objection, and I will withdraw the question.

By Mr. Haslett:

947 Q. Has your company, on occasions, placed an order with the brokers of the Morton Salt Company here in Miami for a full carload of Morton's round package free running salt?

A. No, sir.

Q. All salt comes in pool cars?

A. That is my understanding, but I don't know that business.

Q. You are not an officer of the Economy Wholesale Grocery Company, are you?

A. No, sir.

Q. You are not on the board of directors of the company?

A. No, sir.

Q. You are just an employee of the company?

A. Yes.

Q. And buyer of salt for the Miami branch?

A. Yes, sir.

Mr. Haslett: That is all, sir.

Mr. McBride: I have only about two more questions, Mr. Examiner, and I am through.

Recross Examination by Mr. McBride.

Q. What are the initials of the Mr. Davis to whom you referred as president of the company?

A. J. E. Davis.

Q. And one final question, Mr. Bullman, with re-
948 spect to these special offers. If a competitor of yours or another wholesaler in the city were making what you would recognize as a special offer of a nationally advertised product for a day or a week, that might be two or three cents below your list price, would you necessarily feel compelled to meet that competition, knowing that it was a special loss leader of that type?

A. Ordinarily, we would adhere strictly to the list. If some very good customer insisted he could buy salt for three cents a case less, we would probably concede him the three cents, but not as a general practice.

Q. But not as a general practice?

A. No, sir.

Q. In other words, the prices of the various commodities, including salt, will have certain gyrations that you may or may not follow with respect to like commodities in your own company, is that correct?

A. That is true.

Trial Examiner Purcell: Did you understand the question?

The Witness: That word "gyrations" is a little confusing.

Mr. Haslett: I am sure counsel will be glad to give the definition of that.

Mr. McBride: I will withdraw that and substitute
949 the word "changes."

Trial Examiner Purcell: Read the question back with the substitution, Mr. Reporter.

(The question referred to was read as follows:

"In other words, the prices of the various commodities, including salt, will have certain changes that you may or

may not follow with respect to like commodities in your own company, is that correct.")

The Witness: Yes.

Mr. McBride: I think that is all.

Mr. Haslett: Just one question.

Redirect Examination by Mr. Haslett.

Q. Mr. Bullman, a price is an important factor in your business, isn't it, what your competitor is selling its products for?

A. Yes, sir.

Q. And your company endeavors to meet the price of competitors in order to maintain its position in the market?

A. For the most part.

Q. And any price that a competitor might have on the sale of salt, whether sporadically or not, would have some effect upon your company's business?

A. Sometimes it would and sometimes it wouldn't. In other words, we all have our specials for each period 950 or different periods, and those are the specials.

Q. Where a competitor has a special on Morton's round package free running iodized salt, selling it at, say, $1.50 per case, and one of your customers requested that price, does your company grant the price to that particular customer upon his request?

A. That would depend upon the customer, whether he just came in for one case of salt or whether he was a big customer.

Q. But it is the policy of your company to meet competition?

A. In instances, but not always, no, sir.

Mr. Haslett: I think that is all.

Mr. McBride: No further questions.

(Witness excused.)

Mr. Haslett: Mr. Examiner, I would like for the record to show that Mr. J. E. Davis, of the Economy Wholesale Grocery Company, was subpoenaed as a witness in support of the Commission's case here in Miami, but I was advised by Mr. Bullman that Mr. Davis was out of town and could not be reached, and I, therefore, had Mr. Bullman come as a substitute for Mr. Davis.

Trial Examiner Purcell: Let the record so show.

Mr. Haslett: I would also like for the record to show,

Mr. Examiner, that a subpoena was issued for the manager of the Winn-Lovett Grocery Company at Tampa,
951 Florida, and it was not complied with, due to the fact that the Winn-Lovett Grocery Company does not operate a branch at Tampa, Florida, but the subpoena was forwarded to its main office at Jacksonville, and I want the record to show that the subpoena is being released at this time, and a representative of Winn-Lovett is not to be called upon at any subsequent proceeding to appear as a witness for the Commission in support of its case relative to the testimony at Tampa.

A subpoena was also directed to the manager of the Winn-Lovett Grocery Company at its branch at Miami, Florida. I am now advised that this branch went out of business about a year ago, and that the subpoena was forwarded on to Winn-Lovett's main office in Jacksonville. I want the record to be specific upon the fact that no representative of Winn-Lovett will be required in any subsequent hearing to appear relative to the Commission's case in Miami, Florida.

Trial Examiner Purcell: Let the record so show.

952 Mr. Haslett: Mr. Examiner, it is now 2:45. Counsel for the respondent and counsel for the Commission have been in attendance at this hearing for one hour and the witness that the Examiner referred to has not put in his appearance up until this time.

I would like for the record to show that Mr. John Pittman, of Pittman & Company, of West Palm Beach, Florida, was duly subpoenaed by the Federal Trade Commission to appear at this hearing at 1:30 this afternoon to testify in support of the Commission's case. Mr. Pittman has not put in his appearance, and we have waited for a full hour, and I don't feel that we should wait any longer for Mr. Pittman.

I want the record to show that I shall take appropriate action upon my return to Washington to remedy this situation, by moving the Commission to ask the Court for an order of enforcement to enforce its subpoenas in courts.

Trial Examiner Purcell: Very well, sir.

953 Mr. McBride: Mr. Examiner, in view of the circumstances, I should now like to make my request for the withdrawal of Commission's Exhibits numbered 97 to 99-B, inclusive, introduced in evidence this morning, for the purpose of making photostats, thereafter to return the originals to the record.

Trial Examiner Purcell: Permission is granted.

954 Federal Court Room No. 2,
Post-Office Building,
Jacksonville, Florida,
Thursday, May 7, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

955 Mr. Haslett: Mr. Examiner, I would like for the record to show that after the last hearing had in Miami, I placed a telephone call for Mr. Pittman of the Pittman Brothers, West Palm Beach, to ascertain the reason why he did not appear in response to a subpoena duly served upon him. He advised that he did not receive
956 the subpoena, and that his name was not John Pittman, as appeared on the subpoena, but J. L. Pittman, and that the subpoena was refused for that reason, so I would like for the record to be clear that the mistake was mine, and not Mr. Pittman's, and that he will not be required to appear as a witness at a later date.

Trial Examiner Purcell: Let the record so show.

Mr. Haslett: I will call as my first witness, Mr. Milton L. Hollins, of the Daylight Grocery Company.

MILTON L. HOLLINS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Hollins?

A. Milton L. Hollins.

Q. And where do you reside, sir?

A. You mean, my business address?

Q. No, your residence, do you live in Jacksonville?
A. 2342 Post Street.
Q. Jacksonville, Florida?
A. Yes, sir.
957 Q. In what business are you engaged?
A. Wholesale and retail grocery business.
Q. And with what company are you connected?
A. Daylight Grocery Company.
Q. And where is the Daylight Grocery Company located?
A. 40 South Hogan Street.
Q. In the city of Jacksonville?
A. In the city of Jacksonville.
Q. And what position do you hold with that company, sir?
A. Secretary.
Q. And how long have you been secretary of the Daylight Grocery Company?
A. I don't remember the year we incorporated, but ever since we incorporated.
Q. Can you remember approximately the time? Has it been five years?
A. It is over five years. I believe it was in 1929, if I am not mistaken.
Q. And you say Daylight Grocery Company is a corporation?
A. It is.
Q. Incorporated under the laws of what state, sir?
A. Florida.
Q. And what is the business of the Daylight Grocery Company?
A. Wholesale and retail groceries.
958 Q. Do they sell groceries and allied products to the retailers?
A. Yes, sir.
Q. And they also sell groceries and allied products through their wholly owned retail stores direct to the consuming public?
A. That is correct.
Q. Has the Daylight Grocery Company any competitors?
A. We have.
Q. Now, name some of the competitors in the wholesale line.

A. In the wholesale line, Fetzer's Grocery, Chitty & Company, Hagin-Peters Company, United Food Stores, Inc., Economy Wholesale Grocery Company. Do you want any more?

Q. And would you name some of your competitors that operate retail stores in competition with your retail stores?

A. Fretzer's A&P, Winn-Lovett; of course, there are hundreds of independent merchants.

Q. I think that is sufficient, sir. Does your company handle or sell salt?

A. Yes, sir.

Q. Does it purchase any of its requirements from the Morton Salt Company?

A. We do.

Q. What type of salt does your company purchase from the Morton Salt Company?

959 A. Mainly, Morton's free running plain salt and iodized salt.

Q. Is that in the round package?

A. Round package, yes.

Q. And has a blue label on it?

A. I believe so, yes.

Q. Do you know the price at the present time that your company pays for the round package blue label salt from the Morton Salt Company, per case?

A. I didn't check on that. I think it is $1.50, isn't it?

Q. I think it is agreed upon that it is $1.50. And it has been in effect for a long time, if you know, sir?

A. Yes, it has.

Q. Does your company make any purchases from the Morton Salt Company on a carload basis?

A. We do, yes.

Q. What type of salt is purchased on a carload basis?

A. The Morton's plain and iodized. They also package a competitive salt in a one and one-half pound package, I forget the name of it, Kleer, I believe.

Q. Kleer brand?

A. Yes, sir.

Q. And what do you mean by "competitive salt?"

A. Well, that is a cheaper salt, not in the round package.

Q. Is that what is known in the trade as the 5-cent salt?

960 A. Yes.

Q. What is the price that your company charges for the round package salt through its retailer-owned stores to the consuming public?

A. I wouldn't say for sure. I think, about 7½ to 8-cents a package; I wouldn't say for certain.

Q. Would it be possible for you to find out that price for us?

A. Yes, I could find out very easily. I don't check the stores very often.

Q. Is the price that your company pays for its products an important factor in its business?

A. Certainly.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company upon the purchases made by your company from the Morton Salt Company?

A. No, we don't.

Q. Does your company receive any discount on the carload basis?

A. No, sir.

Q. You say the price at which your company pays for its products is an important factor in its business?

A. It is.

Q. What effect would it have on your business if a competitor of yours gave $1.40 for a case of Morton's
961 round package blue label free running and iodized salt, while at the same time you are paying $1.50 a case for it, sir?

Mr. McBride: If the Examiner please, I object to that for the usual reasons, and for another reason in this case. This witness hasn't qualified as knowing anything about the competitive price basis of the wholesale business. He has testified only that he is the secretary of the company. We have no indication of what his duties are or upon what he could predicate an opinion, so that in addition to my usual objection to that question, I make that additional specific objection in this case.

Mr. Haslett: Mr. Examiner, I think the objection is well taken in point as to the qualifications of this witness that have not been raised heretofore. He being an officer of the company, he is familiar with the activities of the company, but if Mr. McBride wants the foundation laid for it, I will be glad to lay a foundation for it.

Trial Examiner Purcell: Do so, please.

By Mr. Haslett:

Q. You say you are secretary of the Daylight Grocery Company?

A. Yes, sir.

Q. What are your duties as secretary of the company?

A. Outside of being the regular secretary and keeping the minutes, I am in charge of keeping the disburse-
962 ments. I help make the price lists, mailing lists, and generally manage the office of the wholesale division.

Q. Are you familiar with the books, records and the files of the Daylight Grocery Company?

A. Yes, I am.

Q. Do you do any purchasing for the company?

A. No, I don't.

Q. Do you have charge of the invoices that reflect the purchases made by your company?

A. I do.

Q. In the course of your business, do you, on occasions, call upon your various retailer outlets?

A. I don't personally, no.

Q. Who in your organization does call on your retailer outlets?

A. We have a city salesman and several salesmen out of town.

Q. I mean, who is in charge of that particular work, sir?

A. Mr. Edwards, president of the company. We have Mrs. Pawlicki, who is in close contact with the salesmen.

Q. I believe you stated that you were in charge of the minutes of the corporation?

A. Yes.

Q. Do you attend the meetings?

A. I do.

963 Q. Are prices discussed at the meetings?

A. Some, yes, sir.

Q. Prices at which the commodities are sold and purchased?

A. Yes.

Q. Do you feel qualified to testify as to what effect a differential in price may have upon your business?

Mr. McBride: If the Examiner please, I object to that. The test is the Examiner's observations and not whether this witness feels qualified.

Trial Examiner Purcell: Objection sustained.

By Mr. Haslett:

Q. Is your business affected by the fact that one of your competitors is purchasing from the Morton Salt Company, round package blue label free running salt at $1.40 a case, while at the same time you are paying $1.50 a case for it, sir?

Mr. McBride: If the Examiner please, I renew my objection again, and particularly in view of the light of the witness' testimony. It has nothing whatever to do with the buying for this company, and nothing to do with the outside retail merchandising.

Trial Examiner Purcell: I will permit you to cross-examine the witness at this time on the matter of qualification, if you care to.

Mr. McBride: I don't believe I care to, Mr. Exam-
964 iner, because his answers to the direct questions of counsel for the Commission indicate quite clearly on the record his lack of qualification.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Objection sustained.

Mr. Haslett: I would like for the record to show that this witness is excused temporarily.

Mr. McBride: If the Examiner please, I take it that if I feel it necessary on the questions to date, I may have the privilege of cross-examining this particular witness?

Trial Examiner Purcell: You may have that right, sir.

Mr. Haslett: That is understood, of course.

Mr. McBride: I didn't know whether Mr. Haslett was going to call this witness back or not.

Trial Examiner Purcell: You have the right to call him of your own initiative on cross-examination, if you wish. That right is specifically reserved to you.

(Witness temporarily excused.)

Mr. Haslett: I will call Mr. E. L. Hagin.

E. L. HAGIN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

965 *Direct Examination by Mr. Haslett.*

Q. Your name is Mr. E. L. Hagin?
A. Yes, sir.
Q. Where do you reside, Mr. Hagin?
A. 1820 Van Wert Avenue.
Q. Jacksonville, Florida?
A. Yes, sir.
Q. And what business are you engaged in?
A. Wholesale grocery business.
Q. And how long have you been in the wholesale grocery business?
A. Twenty-five years, August 1st.
Q. And with what concern are you connected?
A. Hagin-Peters Company, Inc.
Q. And it is a corporation, is it?
A. Yes, sir.
Q. Incorporated under the laws of what state?
A. Florida.
Q. What position do you hold with that concern?
A. President.
Q. How long have you been president?
A. Since the organization.

966 Q. As president, you have general supervision of the entire company?
A. Yes, sir.
Q. Has your company any competitors?
A. Oh, yes.
Q. Would you name some of them for us, sir?
A. Clarke & Lewis Company, Chitty & Company; C. W. Zaring & Company, Cumberland & Liberty Mills Company. Now, they are the principal ones, strictly in the wholesale business.

Then, there is Daylight Grocery Company, Setzer's Stores; they call it Setzer's Stores, I believe, and Economy Grocery Company, and what they call the Florida Tobacco & Sales Company; anyhow, it is a little place out on Florida Avenue.

Q. Does your company sell its products strictly at wholesale?

A. Yes, sir.

Q. And it sells groceries, salt and allied products to the retailers?

A. Yes, sir.

Q. Does it have any retail stores affiliated with it, sir?

A. No, sir.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. And does it make any purchases of its requirements of salt from the Morton Salt Company?

A. Yes, sir.

967 Q. And what type of salt does your company purchase from the Morton Salt Company?

A. We buy what they call 100 pound common fine No. 1 crushed, that is ice cream salt in 100 pounds, and 100 pound "C" grade salt in 100 pound bags, 6-10's common fine, 15-4's ice cream, 50 pound block salt, stock salt, and 50 pound block plain salt, that is stock salt, and 36 one and one-half pound square package salt.

Q. Is that the Kleer brand?

A. I believe it is the Kleer brand.

Q. Does your company make any purchases of round package blue label free running and iodized salt from the Morton Salt Company?

A. Not from the Morton Salt Company, no, sir.

Q. Where does it make its purchases of that type of salt, if it handles it, sir?

A. From Winn-Lovett Grocery Company.

Q. Does your company receive upon its purchases from the Morton Salt Company, any discounts or allowances of any sort?

A. Only one purchase of last year, I don't know whether you would call it an allowance or not. We bought one car of square packaged salt in February, I believe, of 1941, and had an allowance of 10-cents a case.

Q. On the Kleer salt?

A. Yes, sir.

968 Q. Was that a full car?

A. One thousand cases.

Q. One thousand cases?

A. Yes, sir.

Q. Does it receive any discounts or allowances upon its purchases of Morton's round package blue label salt?

Mr. McBride: If the Examiner please, I object to that

question for two reasons; reason one being the reason given yesterday with respect to this line of inquiry directed to the purchases of this witness from sources other than the respondent in this case. I explained my reason at that time. The second reason is, we have nothing but the vague question about discounts, and nothing at all with respect to where it is coming from, and the terms of his purchases, so if I am to be overruled on the first reason, I wish it sustained for the second reason.

Mr. Haslett: Mr. Examiner, I will ask the reporter to read to you the last question, and if there is anything objectionable to that question, I don't know what the basis is which the objection could be founded.

Trial Examiner Purcell: Read the last question, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Do you still urge your objection, Mr. McBride?

969 Mr. McBride: I do, yes.

Trial Examiner Purcell: I am going to overrule it, sir.

The Witness: Do you want me to tell you how it was billed?

By Mr. Haslett:

Q. I want you to answer the question first, whether you receive any discounts on the purchases of Morton's round package free running salt.

A. We don't receive a discount. We receive an allowance of 10-cents a case.

Q. I see, sir, and how often is that allowance paid, is it quarterly, semi-annually or annual?

A. No, there is no regular time, I don't think.

Q. And do you receive that from the Winn-Lovett Grocery Company?

A. Yes, sir.

Q. And why do you make your purchases of the round package blue label free running salt through the Winn-Lovett Grocery Company instead of direct from the Morton Salt Company?

Mr. McBride: If the Examiner please, I wish my objection noted to this entire line of questioning for the reasons as stated before.

Trial Examiner Purcell: Objection overruled.

The Witness: Let's see, what was the question?

970 Mr. Haslett: Read the question, Mr. Reporter, please.

(The question referred to was read by the reporter.)

The Witness: We were, several years ago, contacted by their representative.

By Mr. Haslett:

Q. By whose representative?

A. Morton's, the Morton Salt Company, by their local representative, and he advised us that if we made our orders through Winn-Lovett Company, why, we would get the allowance of 10-cents a case.

Q. Does your company purchase 5,000 cases of Morton's free running salt during a 12 consecutive months' period?

A. No.

Q. Do you know approximately how many cases your company does purchase of Morton's round package blue label salt, say, during 1941?

A. It would just be a rough estimate, but I would think, probably, 2,000 cases.

Q. Around 2,000 cases per year?

A. Yes.

Q. And would that be an average figure for the last several years?

A. Yes, I think so.

Q. Is the price that your company pays for its prod-

971 ucts an important factor in your business?

A. Oh, yes; yes, sir.

Q. And is the price that your competitors sell products for also an important factor in your business?

A. Yes.

Q. Would your business be in any way affected by the fact that one of your competitors was paying for its Morton's round package blue label free running salt $1.30 per case, while at the same time you were paying $1.40 a case for it, sir?

Mr. McBride: I object to that, Mr. Examiner, for reasons previously indicated.

Trial Examiner Purcell: Same ruling. He may answer.

The Witness: Yes, I would think so.

By Mr. Haslett:

Q. And would your business be affected by the fact that one of your competitors was selling Morton's round pack-

age blue label salt at 2-cents a case under the price that you were charging for it?

A. To lots of the trade, it would, yes.

Q. Do you make any purchases on a carload basis other than the one you just told us about, the Kleer salt?

A. We buy bulk salt in carloads; we call it bulk salt, 100 pound bags, and 6-10's common fine block salt.

972 Q. Does your company receive any discount from the Morton Salt Company on a carload basis?

A. No, sir.

Q. Do you get the carload price?

A. Yes.

Q. Have you a carload invoice where you purchased a car of Kleer salt and received the 10-cents per case allowance?

Mr. Haslett: May we be off the record just a moment, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.).

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Hagin; at the time that you received the 10-cents per case allowance on the Kleer table salt from the Morton Salt Company, how was the information communicated to you that such an allowance would be granted by the Morton Salt Company?

A. Through their Jacksonville representative.

Q. They called you and told you to take 10-cents per case off of the invoice?

A. They told me when they sold it to me.

Q. When they sold it to you?

A. Yes, sir.

973 Q. Did they state why they were giving you that allowance?

A. I think that was customary in the trade then. I think they were offering it to other competitors; they were all practically offered the same thing.

Q. It was a competitive adjustment of some sort?

A. Yes, sir.

Q. Did you receive it on any other purchase of Kleer table salt?

A. From anyone else?

Q. No, from Morton. Did you ever receive it on any other instance, other than the 1,000 case purchase?

A. No, I think that is the only car of salt I bought from them in the square package.

Q. Did you state it was on the carload basis that you were receiving the 10-cent allowance?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 100.

(The document referred to was marked "Commission's Exhibit 100" for identification.)

By Mr. Haslett:

Q. Mr. Hagin, I hand you what has been marked for identification as Commission's exhibit No. 100, and ask you to describe it, if you will, sir?

974 A. Describe the invoice?

Q. It is an invoice, is it, sir?

A. Yes, Morton Salt Company to Hagin-Peters Company, Jacksonville, Florida.

Q. Has it a number on it, sir?

A. Yes, 32010.

Q. And has it a date, sir?

A. February 21, 1941. It has two dates, February 26th—probably that was the date it was shipped, I don't know, on February 26, 1941.

Trial Examiner Purcell: Now, what date is it?

Mr. Haslett: February 26, 1941.

Trial Examiner Purcell: What is the number of it, 32010?

Mr. Haslett: That is correct. I offer the document in evidence, Mr. Examiner.

Mr. McBride: No objection, Mr. Examiner.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and so marked by the reporter as Commission's exhibit No. 100.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 100" was received in evidence.)

By Mr. Haslett:

Q. Mr. Hagin, does your company receive any al-
975 lowance from the Morton Salt Company for handling charge or drayage on its purchases?

A. We haven't bought any lately, but all salt bought in carloads was a warehouse delivery price, and the handling charge from the dock to the warehouse was always chargeable to any salt company.

Q. I see.

A. If it was a warehouse delivery, see.

Q. It is not only confined to Morton's salt, but to any processor of salt that made sale to your company?

A. Or anyone else, any other manufacturer.

Q. And when you haul the salt from the siding where the car was situated, or the dock where the boat was located, you charged the Morton Salt Company for the drayage and the handling of that product?

A. Yes, sir.

Mr. Haslett: Mr. Examiner, may we go off the record just a moment?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Reporter, I hand you six documents and ask that they be marked for identification as Commission's exhibits 101-A, B, C, D, E, and F.

976 (The documents referred to were marked "Commission's Exhibit 101-A, 101-B, 101-C, 101-D, 101-E, 101-F," for identification.)

By Mr. Haslett:

Q. Mr. Hagin, I hand you herewith what has been marked for identification as Commission's Exhibit 101-A to F, and ask you to begin at the first document, Commission's exhibit 101-A for identification, and describe each document?

A. 101-A is an invoice from the Morton Salt Company, shipped on February 20, 1941, car No. 40765.

Q. Has it an invoice number, sir?

A. No. 40995.

Q. Now, the next document, sir?

A. A uniform straight bill of lading covering the car.

Q. Is that Commission's exhibit for identification 101-B?

A. Yes, car No. 40765.

Q. And what is Commission's exhibit 101-C?

A. A freight bill from the Bull Steamship Line to Hagin-Peters Company. Arrival in Jacksonville on or about March 12, 1941.

Q. Is that Commission's exhibit for identification 101-C?

A. Yes, 101 C, 50,500 pounds of salt. Next is the charge for draying and handling of a car of salt, car SA-261046, our charge of March 10, 1941.

977 Q. Does that appear on Hagin-Peters Company billhead?

A. Yes, sir, Hagin-Peters Company billhead.

Q. And it is marked Commission's exhibit 101-D?

A. That is right, sir.

Q. What is Commission's exhibit for identification 101-E?

A. It is an invoice from Hagin-Peters Company to Morton Salt Company for a car of salt, 40765, handling charge and drayage, $20.42.

Q. And what is Commission's exhibit for identification 101-F?

A. Handling charge on a car of salt from Hagin-Peters Company to Morton Salt Company, car 43022, totalling $18.99.

Q. Were the handling charges that are represented by Commission's exhibit for identification 101-D, 101-E and 101-F, deducted from the invoice price as represented on Commission's exhibit 101-A?

A. Yes, sir.

Q. And the freight also deducted, sir?

A. Yes, sir.

Mr. Haslett: I offer the documents, Mr. Examiner. May we go off the record, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. There is a tender of evidence pending.

978 Mr. Haslett: Yes, but I want to clear it up. I want to withdraw my offer of evidence and make it at just a little later time, sir.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. Mr. Hagin, I now hand you what has been marked for identification as Commission's exhibit 101-F, and ask you to state whether or not the figure that appears thereon was deducted from the invoice as shown by Commission's exhibit 101-A?

A. No, I asked the bookkeeper to give me our ledger

charges from the Morton Salt Company, and he got them all up and pinned them to these papers, and I didn't pay any attention to them. Just these two were deducted. That makes a total of $42.27. This one hasn't anything to do with it.

Q. So, Commission's exhibit 101-F, is not in any way connected with the rest of the exhibit 101-A to E?

A. No, sir.

Mr. Haslett: At this time, Mr. Examiner, I want to offer for admission in evidence Commission's exhibit 101-A to E, inclusive.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described, being Commission's Exhibit 101-A, B, C, D, and E, will be received in evidence and so 979 marked by the reporter.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 101-A, 101-B, 101-C, 101-D, 101-E" were received in evidence.)

By Mr. Haslett:

Q. What is the price that is charged by your company for Morton's round package free running blue label salt per case to its retailer customers?

A. Generally, $1.75, but that depends entirely on the distance we haul it, and the competition we have.

Q. Competition would be a factor in the price?

A. Yes.

Q. What do you mean by that, sir?

A. Well, we have a lot of trade that buys a good deal of merchandise from us, buys in large quantities. Some of them come and haul it away to save us the trucking, and others buy just a small amount of merchandise and require as much service almost to deliver a little bit of an order as it does to a larger one. Some people pay more probably than others, and their accounts are worth more to us.

Q. Would the price at which one of your competitors was offering Morton's round package blue label free running salt have anything to do with the price that you would be offering to sell the product of the same grade, quality and type?

A. If we expected to do any business on it, we have 980 to meet competition, yes.

Q. And at the time that you began to purchase your

requirements of Morton's round package, blue label and free running and iodized salt through the Winn-Lovett Grocery Company, did you have any conversation with any representative of the Winn-Lovett Grocery Company?

A. No, sir.

Q. Regarding their arrangements—

A. I had better change that answer, and say I don't remember. It has been a good long time and I don't remember.

Q. That will be quite all right, sir. Your conversations were held with the representative of the Morton Salt Company, is that correct, sir?

A. In the purchase of their salt, yes.

Q. In regard to the arrangement of the purchasing through the Winn-Lovett Grocery Company, your conversations were with the Morton Salt Company?

A. As well as I remember, they were.

Q. Has your company any branches?

A. No, sir.

Q. It has only one warehouse and office?

A. Yes, sir.

Q. And its principal office and place of business is located in Jacksonville, Florida?

A. Yes, sir.

981 Q. Could you tell me exactly what territory is covered by your salesmen in soliciting orders from retailers for the sale of groceries and allied products to such retailers?

A. Do you want me to name the counties in Florida?

Q. Well, is it within a radius of 50 or 60 miles?

A. No, a radius of 125 miles.

Q. How far south do you go, sir?

A. Titusville, that is 150 miles.

Q. And how far west do you go?

A. Cross City.

Q. Is that in the state of Florida?

A. Yes, that is over on the west coast.

Q. And how far north do you go?

A. To Brunswick, and around Homerville, Georgia.

Q. Is Brunswick in Georgia?

A. Yes, and Patterson.

Q. Does your company do any specialty missionary work for the Morton Salt Company to promote the sale of its blue label round package salt?

A. No, sir, only through our salesmen.
Q. Through your salesmen?
A. Yes.
Q. Do your salesmen promote the sale of that product through the retailer?
A. Through the retailer or to the retailer.
982 Q. To the retailer, sir.
A. They offer it for sale, of course.
Q. Is there any promotional campaign in connection with the sale of it, sir?
A. No.
Q. Do you do any advertising at all, sir?
A. Other than this price list, none other than that.
Q. How often is that price list published?
A. Once a month.
Q. Has the price of Morton salt been approximately the same for the past several years, your resale price?
A. No, bulk salt has gone up lately.
Q. How about the round package free running salt?
A. Well, I can't answer that question, for I don't know how far back, but I think for a year or two it has been the same price.
Mr. Haslett: I think that is all, your witness, Mr. McBride.
Trial Examiner Purcell: What did the witness testify was the resale price?
Mr. Haslett: $1.75, generally.
Trial Examiner Purcell: Any cross-examination?

Cross-Examination by Mr. McBride.

Q. Mr. Hagin, I believe you stated that when you
983 got carload shipments, you got the carload price on salt purchases from the Morton Salt Company?
A. From Morton, yes.
Q. And that was reflected on your invoice on the carload basis, is that correct?
A. Yes.
Q. You answered counsel's question when he asked you whether or not you got a carload discount, to the effect that you did not. As far as you know, there may have been a discount off of the less than carload price list to produce that carload basis on your invoice, is that correct?
A. Let me get that question again.

Trial Examiner Purcell: Read the question.

(The question referred to was read by the reporter.)

By Mr. McBride:

Q. Perhaps I can clarify it, Mr. Hagin. Did you know at the time you purchased these various carloads of salt from the Morton Salt Company, what the less than carload price was at the time of those purchases, for the items in your purchase?

A. I suppose I did at that time, but I couldn't remember now, because we seldom ever purchase less than a car of salt.

Q. In any event, you didn't pay the less than carload price, you paid the regular published carload price?

A. Yes, sir.

984 Q. Now, in connection with Commission's exhibit Nos. 101-A to E, I believe you testified that you billed the Morton Salt Company for handling charges and drayage charges covering that shipment of salt, is that correct, Mr. Hagin? I show you the exhibit to which I refer.

A. Yes, that is correct.

Q. And those charges, then, Mr. Hagin, were deducted from the invoice price in making your remittance to the Morton Salt Company?

A. Well, that was a ledger charge. I don't know whether they were deducted from that particular invoice or not, but we deducted it when we made the payment.

Q. In any event, you went to the boat, procured this salt and hauled it to your warehouse and received either a credit or some sort of an allowance for the drayage and the handling?

A. That is right.

Q. Do you know whether or not, Mr. Hagin, the freight rate on shipments of salt by boat at that time included as a part of the tariff a handling and drayage charge?

A. The salt was sold to us f. o. b. warehouse, and whether it was in the tariff or not, I can't tell you.

Q. When it was sold to you f. o. b. warehouse, that meant it was to be delivered right to your warehouse?

A. That is right.

985 Q. And then if you w . to the boat and avoided the handling charges and the drayage charges, then you received a credit from the delivered price to your warehouse?

A. That is right.

Q. And that was the usual arrangement, so far as you know, on Morton Salt Company shipments, and on all shipments by boat into this city?

A. Yes.

Q. So far as you know, that arrangement does not obtain with respect to rail shipments where it is placed on a siding or f. o. b. the car?

A. No.

Q. Do you know what the rate of those charges were as to the handling and the drayage charges, do you recall?

A. So much a ton drayage and so much per ton handling.

Q. If I were to indicate that the handling charge was 50-cents a ton, does that sound correct to you?

A. I think that is correct, yes.

Q. And that the drayage charge, under the circumstances that you have outlined, was $6.44 a car, does that sound correct to you?

A. Whatever that invoice reads.

Q. Well, it doesn't show it on this particular bill. You also testified, I believe, Mr. Hagin, that at the time you decided to make your purchases of Morton's blue can 986 from Winn & Lovett that you consulted some representative of the Morton Salt Company?

A. I don't know whether all of the conversation was with Morton or with Winn & Lovett. That has been some time back, and I don't remember, but I am satisfied that Morton Salt Company's representative talked to me about it.

Q. But you don't recall the name of the person whom you talked with from the Morton Salt Company?

A. It would have to be either A. M. Labry or Mr. Frank Clark.

Q. But you did talk to Winn & Lovett and make some arrangement with them, or you feel that you must have, as nearly as you can recall?

A. I imagine when we made a charge to them we had some understanding with Winn & Lovett. We would have hardly made a charge to a competitor and business house without having some understanding.

Q. How many items or how many commodities does your company carry on the whole, Mr. Hagin, 1500 or 2,000, or 2,500?

A. Well, if you would take the different sized packages

of different merchandise, such as so many packages of corn or salt or peas, there would be three or four thousand, I guess, but I would say 1500 or 2000 items at least.

Q. That would be about the general average for your business?

987 A. Yes, sir.

Q. And other comparable wholesale businesses?

A. Yes, sir.

Q. Now, of those items, how many of them would consist of salt items of all kinds, of all companies that you handle? Do you have eight or ten salt items?

A. I would say eight or ten.

Q. So that the number—

A. I could name them over, if you want me to.

Q. Well, if you just check them off in your mind and give me the number, that is all I am interested in, Mr. Hagin.

A. About ten would cover it.

Q. So that actually, then, the salt that you handle of all types and varieties constitutes about half of one per cent of the total number of commodities that your company handles?

A. Yes.

Q. Salt, I take it, is one of the cheaper items in the commodities, compared to sugar and cases of various types of canned goods?

A. Yes, sir.

Q. Well, then, with the items of salt which you handle being approximately one-half of one per cent, in terms of your dollar volume, would your salt business in total be about half of one per cent, also, of the total dollar

988 volume done by your company?

A. No, I don't think so.

Q. It would be less than that?

A. Yes, sir.

Q. What would it be, so nearly as you can make an estimate?

A. That would be hard to estimate, salt being so heavy and hard to handle and so cheap that it is a mighty small portion of our dollar and cents business, salt is.

Q. It would be a very small fraction of one per cent of your total volume, your total dollar volume?

A. Yes, sir.

Q. You are referring now to all the salt items you carry, all ten items?

A. Yes.

Q. And of those ten items, one of them is Morton's blue can, about which you have been testifying?

A. Yes, sir.

Q. So that the total percentage of your dollar volume during the course of a year, accounted for by Morton's blue can, would be a very minor proportion of one per cent of your total business?

A. A very minor proportion, yes.

Mr. Haslett: Mr. Examiner, I am going to object to this line of testimony. I don't know what counsel has in mind by developing that Morton's salt business is
989 such an infinitesimal portion of this man's business. That is beyond any issue in this case. The issue goes to whether or not—

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: I objected to that.

Trial Examiner Purcell: I overrule your objection.

By Mr. McBride:

Q. I believe you testified, Mr. Hagin, that your volume of Morton's blue can business was approximately 2,000 cases a year?

A. It wouldn't be more than that, and I doubt whether it is that much or not, but it wouldn't be more than that.

Q. It would be 1800 to 2000 cases per year, somewhere in that neighborhood, as near as you can estimate?

A. Yes, without going back to the records to find out.

Q. As nearly as you can recall, has that volume been about the same, we will say, from 1936 to date?

A. I think so, yes.

Q. Year after year, it would be about the same?

A. Yes.

Q. Now, with respect to your price, your list price of $1.75, do I recall your testimony correctly that that price has been about the same year after year, shall we say from 1936 to date, with the variations that you explained?

990 A. Well, I couldn't say from 1936. I don't remember what the package salt was costing us at that

time. That was seven or eight years ago, but about the same margin of profit based on the cost on an item that runs in the small dollar and cents that was as expensive to handle as that is.

Q. Do you know what the regular price per case of blue can is, $1.50 a case?

A. $1.50 a case.

Q. So that you would say, as nearly as you can recall, that as long as the sale price has been $1.50 a case, that your price probably was about $1.75 to the retailer trade?

A. Yes, that varies according to the class of competition we get into, though.

Q. And by reason of credit risk and delivery range, and so forth, as you explained?

A. That is right, yes.

Q. Now, the type of competitors that you have here in Jacksonville with respect to Morton's blue can, that isn't always $1.75, it may be higher or it may be lower, is that correct?

A. You mean, what we sell it for?

Q. That is right.

A. Why, it wouldn't be higher, I don't think, but it might be lower.

Q. It might well be lower?

991 A. Yes, sir.

Q. That is true with probably your whole line of commodities?

A. Yes, sir.

Q. That you will be high on some and low on others, is that correct?

A. That is right.

Q. You are never in the happy position of trying to be the lowest one on all commodities, of all 2,000?

A. That is right.

Q. As you solicit your retail trade, or your men solicit it, they endeavor to get a full line of commodities, salt, sugar, and everything else, isn't that correct?

A. Yes, they try to sell a man all his credit will stand, and all that they can sell him, if he is good, yes.

Q. Do you have a fairly regular list of retail customers that you have from year to year, in making allowances for turn-over and some figures here and there?

A. Oh, yes.

Q. So, wouldn't it be true in your experience, Mr. Hagin, that even though you might be two or three cents out of line on a can of peas or a case of salt or a sack of potatoes, you might not necessarily lose that particular retail account, or that particular sale if you were generally in line on all of your commodities?

992 A. No, sir, we wouldn't, that doesn't affect lots of buyers.

Q. Now, on competition with prices, as I understand it, you might meet some competition on the resale price of Morton's blue can, or you might not, depending upon what the price was and the length of time it was offered?

A. That is right.

Q. In other words, if one of your competitors offered Morton's salt for a day or a week as a loss leader special, you wouldn't necessarily endeavor to meet it for that week?

A. No, sir.

Q. You would pass it, and you wouldn't suffer particularly in your business as a result?

A. That is right.

Q. If one of your competitors was selling salt, Morton's blue can, at $1.75 a case, you would be on a par with him so far as the offering of Morton's blue can to the retail trade is concerned, isn't that right?

A. Yes, sir.

Q. And so long as that price was maintained by your competitors, it would make practically no difference to your business what that competitor was paying, isn't that correct?

A. That is right.

Q. So that you judge your business and your competitive compliance with the business, is based on the re-

993 sale price, and not the purchase price that your competitor pays, isn't that right?

A. Let me get that now, Mr. McBride.

Mr. McBride: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: It wouldn't affect our business if the competitor didn't undersell us, regardless of the price he bought his goods at. Somebody could give them to him, but if he maintained around the price that we were getting, it wouldn't affect us, our net proceeds.

By Mr. McBride:

Q. So that you judge what you are going to do with your price among other things by what the competitive resale price is of your competitors, without respect to what his purchase price might be?

A. Oh, yes.

Q. So that when you answered counsel's question as to whether or not the fact that one of your competitors might be buying Morton's blue can at $1.30 a case would affect your business, what you had in mind was that it would affect your business only if he resold it—

A. Sold it for less than we were buying it for, and for less than we could afford to sell it at.

Q. And if any competitor were reselling it for less than your price, you would be affected only if, as and when
994 it were something other than a daily special or by somebody who was offering the same type of wholesale service, isn't that correct?

A. That is right.

Q. The mere fact that a cash and carry grocer might offer it at less than what you were offering it at would not necessarily affect your trade where you offer credit and delivery service, is that correct?

A. No, I couldn't say that. I think it would in a number of cases where if we sold it at a real knock-down price, the trade would find some way to go there and get it and maybe get something else while they were getting the salt.

Q. Apparently, it hasn't bothered your company too much, so long as your prices have held up and your volume has held up, and your prices have been about the same the last six years?

A. Our volume hasn't fallen off much in the last 15 or 20 years. We have been building up a little bit.

Q. And that is true of the salt business as well as anything else?

A. I think our salt business runs along about the same from year to year.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

995 Q. Mr. Hagin, I asked you the question whether or not the purchase price is an important factor in your business, the prices at which you purchase your commodities, and I believe you stated that it was an important factor?

A. It is an important factor, as far as our competition is concerned. It wouldn't make any difference about the price we pay if our competition didn't undersell us on the same item, which would give us a living margin of profit.

Q. Would the margin of profit be greater where a competitor was getting it at 10 cents lower than the price that you were paying for it?

A. I wouldn't know that, because—

Mr. McBride: If the Examiner please, I object to counsel's question with respect to the term "profit". I have already argued and thrashed that out on the record, and I think the Examiner sustained me in my objection to similar questions.

Trial Examiner Purcell: Mr. Haslett, I am sure, will straighten that out.

By Mr. Haslett:

Q. Isn't it a fact that the real reason for your purchases of Morton's round package and free running salt through the Winn & Lovett Grocery Company was to obtain the 10 cents a case allowance that you could not get if you purchased directly from the Morton Salt Com-
996 pany, due to the fact that your quantity wasn't up to their requirements?

A. Yes, in a sense. We have got a lot of people in the salt business and we don't try to buy every package of salt that we buy from Morton. Our package salt business is not so great, we distribute it around.

Q. But the real reason was to get that 10-cent discount?

A. Sure.

Q. Why did you want that 10-cent discount?

A. To be just that much added to the balance sheet at the end of the year.

Q. So, the price at which you were buying it would have something to do with the balance sheet at the end of the year?

A. Yes, sir.

Q. Is that correct, sir?

A. Yes.

Q. And it would have a very determining factor upon the sale price, also, wouldn't it, sir?

A. No, I don't think it would. We don't use the allowance to go out and cut our competitors' prices.

Q. I believe you misunderstood me, Mr. Hagin. It wasn't my purpose to develop from your testimony that you used this 10-cent allowance in order to affect competition between your competitors, but my question was whether or not it would have some effect upon the sale price.

997 A. No, I don't think it would, if we bought it at $1.50, we wouldn't ask more than $1.75.

Q. What effect would it have upon your business if your competitors were getting all of their requirements of groceries and allied products at a price under the price that you were paying for them?

Mr. McBride: If the Examiner please, I object to that, and have already indicated my reason.

Trial Examiner Purcell: Objection sustained.

Mr. Haslett: I think the Examiner's ruling is rather inconsistent, because the Examiner has allowed counsel to go into the background of the entire grocery business, and when counsel for the Commission predicates his questions upon the cross-examination of counsel for respondent, he is met with sustained objections. I feel it is highly prejudicial to the Commission's case. I make my reservation to the Examiner that I shall place the matter at the proper time before the Commission.

Trial Examiner Purcell: That is your privilege, sir. At the same time, I will point out that counsel for the respondent at no time in his cross-examination of this witness touched upon the cost of anything but salt handled by this witness. Now you are undertaking to cover the entire field of operations of the witness and his concern as to prices, and it is on that that I have ruled against you,

998 not on the general background of the witness, the witness' concern, as developed by Mr. McBride, where I permitted him to show the relative value and volume of salt as compared with the entire line of goods of the witness.

By Mr. Haslett:

Q. Mr. Hagin, would your business be in any way affected by the fact that your competitors were buying all

of their salt requirements from various processors and manufacturers at prices lower than the price which you were paying for the product of the same grade, quality, brand and size?

Mr. McBride: My usual objection.

Trial Examiner Purcell: Objection overruled. He may answer.

The Witness: Would our business be affected if the trade bought all of their salt at a lower price?

By Mr. Haslett:

Q. Yes.

A. Yes, as far as our salt business is concerned, we wouldn't sell any.

Q. Morton's blue label round package salt is a well-known brand, isn't it, sir?

A. Yes.

Q. A staple product?

A. Yes.

Mr. Haslett: I think that is all.

999 Mr. McBride: I have no further questions.

Mr. Haslett: Thank you very much, Mr. Hagin.

(Witness excused.)

Mr. Haslett: Mr. Examiner, I would like for the record to show that Commission's Exhibit No. 100 and 101-A to E, inclusive, are to be photostated by the Commission and the photostats returned to Mr. Hagin for his files.

Trial Examiner Purcell: Let the record so show.

We will have a five minute recess, gentlemen.

(A short recess was taken.)

Trial Examiner Purcell: All right, proceed, Mr. Haslett.

Mr. Haslett: I will call as my next witness Mr. Chitty, of Chitty & Company.

A. B. CHITTY was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Chitty?

A. A. B. Chitty.

Q. And do you reside in Jacksonville?

A. Yes, sir.

1000 Q. And in what business are you engaged?

A. What we call the wholesale food distributors.

Q. You sell groceries and allied products to retailer stores?

A. Yes.

Q. What company are you connected with, sir?

A. Chitty & Company.

Q. And what position do you hold with that company?

A. President.

Q. And is it a corporation, sir?

A. Yes, sir.

Q. Incorporated under the laws of what state?

A. Florida.

Q. And how long have you been president?

A. About five years. Let me see, possibly seven years.

Q. For the last seven years?

A. Yes, sir.

Q. Has the Chitty Company any competitors?

A. Well, we wish we didn't. Yes, we have.

Q. Would you name a few of them for us, please, sir?

A. Well, now, could I say this, you know, I don't know just what competitors are. We have people in the same line of business. Would that answer the question or not?

Q. That is right, the people who are selling groceries and allied products to your customers in competition

1001 with you.

A. Well, there would be Hagin & Peters, Clark & Lewis, Zaring & Company, then Setzer's Stores, Daylight Grocery, would that be sufficient?

Q. Yes, I think that is all right, sir. How far south do you operate?

A. Well, to Leesburg, I think, that is south, I believe. It is what I would call south.

Q. And how far is that in mileage, sir?
A. I think, 125 miles, or maybe more.
Q. And how far west?
A. I would say 175 miles west.
Q. And how far north?
A. I am not sure whether we go to Brunswick or not. If we go to Brunswick, that would be the north end, but I wouldn't say definitely that we go to Brunswick.
Q. Do you have any customers in the state of Georgia?
A. Yes.
Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it make any purchases from the Morton Salt Company?
A. Yes, sir.
Q. And what type of salt does your company purchase from the Morton Salt Company?
1002 A. Well, we buy what we term as Morton's salt. Now, I think it is a round blue package.
Q. A round blue label package?
A. That is correct.
Q. Both iodized and free running?
A. Yes, sir.
Q. Do you purchase any other type of salt from the Morton Salt Company?
A. Well, other types of salt are very highly competitive, and I wouldn't say that we haven't purchased from Morton, but, then, we have no definite place to buy highly competitive salt.
Q. Do you know the price that you are now paying for Morton's free running round package salt per case?
A. I think it is invoiced—I haven't a copy of the invoices—but I think it is invoiced at $1.60, and then 10 cents off per case. Now, I don't know whether that is billed that way or not. It might have been billed at $1.50. These invoices for 1939, 1940 and 1941 look like it was billed at $1.50.
Q. $1.50 per case?
A. Yes, sir.
Q. That is the price that you pay for Morton's salt, for that particular product per case?
A. That is right.
1003 Q. What is the resale price charged by your company to its customers?

A. Well, I called the office a while ago, and we got $1.65 for it.

Q. Per case?

A. Yes, sir.

Q. Does your company receive any allowances or discounts of any kind from Morton Salt Company?

A. We received allowances, according to those records there, in 1940 and 1941, of 10 cents a case.

Q. You get 10 cents a case for each case of salt purchased from the Morton Salt Company?

A. Yes, sir. However,—well, I will just answer your question yes.

Q. And has your company any retail owned stores affiliated with it?

A. No, sir.

Q. It sells only at wholesale?

A. Yes, sir.

Q. Does your company make any purchases from the Morton Salt Company on a carload basis?

A. Well, I think we do, but generally speaking, please, sir, if I can make this generality, we don't buy a carload of Morton's round salt at a time, and when we don't, we pick it up from their local brokerage concern here, 1004 that is, it comes in cars.

Q. You purchase it in pool cars?

A. I think, generally speaking, we do, yes. Now, there might be exceptions to that.

Q. And does your company haul the products from the siding where the car is located to your particular warehouse?

A. Well, you see, if we buy a car, of course, it would be at the rear of our warehouse, which would be no hauling from there.

Q. I see.

A. If we haul, why, it would be from the brokerage to a local warehouse here.

Q. So that if it were in a pool car, it would come in to a local warehouse?

A. Yes, sir.

Q. And your company would do the hauling?

A. We would do the hauling, yes.

Q. And does your company receive any allowance from the Morton Salt Company for the hauling of any particular product?

A. No, sir.

Q. Is the price that your company pays for the product an important factor in your business?

A. Well, yes, because our business is based entirely on percentage. For instance, if we pay a high price,
1005 whatever price we pay, we have to add or do add such profit as that particular item will stand. Of course, some items will stand some profit and some won't. Salt is an item that will not, from a percentage point of view, be a profitable item, on account of it being very cheap in the first place, and it is very heavy, but I guess—does that answer your question?

Q. I think it does, sir. Why do you handle Morton's round package free running salt?

A. Well, there is a very definite demand for it.

Q. A consumer demand for it, sir?

A. Yes, naturally, a consumer demand, but of course, we don't go direct to the consumer.

Q. The consumer demand comes to you through the medium of the retailer?

A. That is the idea.

Q. And would you say it is a well known brand of salt?

A. Very definitely, I would say that.

Q. Would you say it is a staple product?

A. Oh, yes.

Q. Is the price that your competitors charge for salt, Morton's round package free running salt, a factor in your business?

A. I wouldn't know what they charge for it. I really wouldn't know what our competitors charge for salt,
1006 so that, I guess, would answer your question, wouldn't it?

Q. Yes, but would your business be in any way affected by the fact that one of your competitors was selling it to your customers, or offering to sell to your customers, Morton's round package free running salt at a 3-cent differential in price under the price that you were charging for it?

A. In some instances, they won't buy that item. For instance, the salt itself, they will just pass that item by if we are not reasonable. I don't know about 3-cents, now, but I would say a differential of 5-cents, if we were 5-cents higher, I don't think they would buy Morton's salt, but it wouldn't necessarily mean that they wouldn't buy other items. Does that answer your question?

Q. Then, a 5-cent differential in price would affect your business, is that true?

A. On Morton's salt, but we are speaking of salt now, of course.

Q. But if a competitor of yours was purchasing Morton's salt at $1.35 a case, while at the same time you were purchasing it for $1.40 a case, would that in any way affect your business?

Mr. McBride: If the Examiner please, I object to that question.

Trial Examiner Purcell: Objection overruled, he 1007 may answer.

By Mr. Haslett:

Q. You may answer, sir.

A. Five-cents a case, there it is only a difference in our cost, you see, because our selling is based on our cost. For instance, if our competitors bought salt for 5-cents less than we did, then it would be possibly 5-cents between the price we ask for it and the price that our competitor asks for it. In some instances, yes, we wouldn't sell the salt. That is, it would naturally deprive us of the sale of some salt in some instances.

Q. Then, a 5-cent differential would affect your business?

A. The salt business, yes, that item.

Q. Well, all of my questions are confined to the salt business.

A. Well, that is all right, but I want to differentiate there.

Q. Now is the allowance or discount that you receive from the Morton Salt Company paid to you by that company?

A. I think the records show there that we get a credit memorandum at the end of the year for 10-cents a case for the number of cases of Morton's salt that we have bought during that calendar year.

Q. You don't purchase any of Morton's products from any of your competitors, do you, sir?

1008 A. No, sir.

Q. You purchase direct from the Morton Salt Company?

A. Yes, sir.

Q. Who solicits your business?

A. Well, Labry Brokerage Company generally solicits

the business. On items like that, however, it is not necessary to solicit, because we buy it, for instance, if they didn't ask for an order for Morton's salt, why, in due time when we needed it, we would give them an order, anyway, but Labry Brokerage Company, I think, solicits our salt business.

Q. And is the Labry Brokerage Company located in Jacksonville, Florida?

A. Yes.

Q. And their salesmen call on you?

A. Well, he does, Mr. Labry.

Q. Mr. Labry calls upon you?

A. Yes, sir.

Mr. Haslett: It is stipulated by and between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's Exhibit No. 53, except as to the quantity of the product, date, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company and Chitty & Company of Jacksonville, 1009 Florida, who is a customer of respondent, Morton Salt Company, and that said Commission's Exhibit No. 53 is typical of such invoices for the sale of salt of the same type that appears thereon that pass between the respondent herein and the customer, Chitty & Company of Jacksonville, Florida, and that such invoices have in the regular course of the respondent's business, passed between the respondent and its said customer, Chitty & Company of Jacksonville, Florida, since the respondent began the sale of and the said customer, Chitty & Company, began the purchase of the type products as appear on Commission's Exhibit 53.

Is it so stipulated, Mr. McBride?

Mr. McBride: That is correct.

Mr. Haslett: Now, Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit 102.

(The document referred to was marked "Commission's Exhibit 102" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 102 is a credit memorandum from the Morton Salt

Company under date of January 10, 1940, numbered 55,210, directed to the Chitty & Company of Jacksonville, Florida?

1010 Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and so marked as Commission's Exhibit 102.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 102" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that you mark it for identification as Commission's Exhibit 103.

(The document referred to was marked "Commission's Exhibit 103" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated between counsel for the respondent, and counsel for the Commission, that the document marked for identification as Commission's Exhibit 103 is a credit memorandum from the Morton Salt Company under date of February 15, 1941, numbered 65,770, directed to the Chitty Company of Jacksonville, Florida?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

1011 Trial Examiner Purcell: There being no objection, the document will be admitted in evidence and marked Commission's Exhibit No. 103.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 103" and was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 104.

(The document referred to was marked "Commission's Exhibit 104" for identification.)

Mr. Haslett: Mr. McBride, may we also have the same stipulation as to the document marked for identification as Commission's Exhibit No. 104, being a credit memorandum from the Morton Salt Company under date of January 23, 1942, number 72,225, directed to Chitty & Company, Jacksonville, Florida?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBbride: None except as to the pencil memorandum shown on Commission's Exhibits for identification 104, Mr. Examiner. I would object to that, simply because I don't know what they are, but I have no objection to the printed and typewritten portions.

1012 Mr. Haslett: The document is offered for the printed and typewritten portions that appear thereon, on Commission's Exhibit No. 104 for identification.

Trial Examiner Purcell: And it shall be so received in evidence and marked Commission's Exhibit No. 104.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 104" was received in evidence.)

By Mr. Haslett:

Q. Mr. Chitty, does your company operate any branches?

A. Yes, sir.

Q. And where does it have branches?

A. In Miami and Orlando.

Q. Miami, Florida, and Orlando, Florida?

A. Yes, sir.

Q. Are all of the purchases of your company placed through the Jacksonville office?

A. No, sir.

Q. Do you have separate purchasing offices for each warehouse?

A. Yes.

Q. Or branch?

A. Yes.

Q. You have a purchasing office for Miami and one also for Orlando?

1013 A. Yes.

Q. Does Commission's Exhibit No. 104 represent the combined purchases of all branches of Chitty & Company from Morton Salt Company for Morton's round package free running and blue label salt?

A. To the best of my knowledge and belief, yes.

Q. Would any single branch of Chitty & Company purchase 5,000 cases of Morton's free running salt during a 12 consecutive months' period?

A. We have not, I mean in the past we have not purchased that much at any one place.

Q. The Miami branch in 1940 did not purchase 5,000 cases of Morton's free running salt?

A. No, sir.

Q. And is that also true as to the Orlando branch?

A. Yes, sir.

Q. And also as to the Jacksonville branch?

A. Yes, sir.

Q. But the combined purchases of all three branches were in excess of 5,000 cases?

A. Yes, sir.

Q. Would the same be true as to 1939 and 1941?

A. Yes, these credit memorandums show the same would be true for 1939, 1940 and 1941.

Q. Does your company sell any of its products 1014 to Winn & Lovett retail stores?

A. No, sir.

Q. Does it sell any of its products to the A&P Tea Company?

A. No, sir.

Q. Do your salesmen call upon those retailers?

A. No, sir.

Mr. Haslett: I think that is all, Mr. McBride.

Mr. McBride: I have just a few questions, Mr. Chitty.

Cross-Examination by Mr. McBride.

Q. You have testified with respect to these three credit memorandums from Morton Salt Company of 10-cents a case on the blue can purchases for 1939, 1940 and 1941.

A. Yes, sir.

Q. Do you know the basis upon which that 10-cent discount was paid?

A. We had to purchase 5,000 cases or more. Does that answer your question?

Q. That is right. Now, was that in a 12 months consecutive period, is that correct?

A. That is right.

Q. I am not sure that I recall whether you described your wholesale business as one which offered delivery service and credit service to its retail customers.

1015 A. We do offer it. I don't remember whether I so testified.

Q. Do you do any cash and carry business at all?

A. No, sir. Well, I wouldn't say we do not, but I mean we are not—

Q. It is sporadic, if at all?

A. That is right, it is not our basic practice.

Q. I think you also testified, Mr. Chitty, that where salt moved to your company pursuant to orders in a pool car, that is where you were buying less than a carload quantity of either the blue can or any other type of salt, that you hauled from the car to your warehouse?

A. Yes, sir.

Q. For which you received no allowance from the Morton Salt Company?

A. No, sir.

Q. Do you recall of any instances, Mr. Chitty, where you may have hauled it from the boat, where the salt moved by boat?

A. I do not. If I may digress, you see, we have had no boat service here for several months, and if we did, it would certainly be back several months ago, and I don't recall any, as a matter of fact.

Q. I believe you were in the room, Mr. Chitty, when I was directing my cross-examination to Mr. Hagin?

A. I came in about 11 o'clock. Yes, Mr. Hagin 1016 was still on the stand when I came in.

Q. Could you tell me, Mr. Chitty, approximately what percentage of your annual dollar volume is accounted for by your total salt business? Would it be one per cent, less than one per cent, or what would the percentage be, as nearly as you can estimate it?

A. Well, it would be purely a guess. I couldn't substantiate it without reference, but I don't think our salt business would amount to over one-tenth of one per cent of our volume.

Q. You handle a number of salt items other than the blue can, is that correct?

A. Oh, yes, we handle the staple salt items.

Q. So that the amount of dollar volume which you get in a year out of the blue can sales of Morton's salt compared to your total dollar volume for all commodities would be much less than one-tenth of one per cent, as nearly as you can estimate it?

A. Well, it is purely a guess, gentlemen, you have got me on the spot. I can't tell you exactly, I will just do the best I can.

Q. All we want is your best estimate.
A. I would say not more than one-tenth of one per cent.
Q. I think you also testified, Mr. Chitty, that in so far as the price of Morton's blue can to the retail trade,
1017 your company was charging $1.65?
A. Yes, sir.
Q. That is, a case?
A. Yes, sir.
Q. Has that price been in effect for a number of years, as nearly as you can recall?
A. Well, I wouldn't want to say. I can't say. It is the price now, but that is something I would have to go into the records to determine definitely.
Q. Then, in determining what your price will be to the retail trade, you endeavor to get a certain percentage of mark-up, as I recall your expression, on salt, as well as other products, is that right?
A. It is my opinion, without proof of the records, that we usually add 15-cents to Morton's salt; that is, 15-cents over cost.
Q. And certainly so long as any of your competitors are selling salt for $1.65, where those competitors also give a delivery service and extend credit to the retailers, there isn't any adverse effect on your business, is that right?
A. Well, you know, I am not a salesman, I wouldn't know how many people we can sell salt to. You see, I know the number of cases of salt we sell, because the records show it, but I don't know who objects to the price, you know, or what percentage of our customers would say that we were too high. Of course, we would never hear it
1018 if we happened to be a nickel cheaper, naturally.
Q. As I recall your statement, if the resale price of one of your competitors was maybe three or four cents less than yours, you didn't believe that would necessarily affect your business adversely, except in rare instances?
A. I doubt if it would, unless, of course, there are other reasons, buyers who rather watch their pennies, and some do.
Q. That would be particularly true, wouldn't it, Mr. Chitty, if the price of three or four cents below your price was, say, a daily or week end special, simply used as a special leader to get business by the competitor?
A. I expect it would, yes.
Q. Well then, it wouldn't materially affect your bus-

iness or affect it at all, would it, Mr. Chitty, if your competitor maintained about the same price level that you do to the retail trade, regardless of what they paid for the salt, is that right?

A. Now, let me understand that. If we sell at $1.65 and our competitor sold for $1.65, it wouldn't make any difference what it cost, no, as long as we were competitive, naturally we would sell the customer that prefers to buy from us, give us the preference.

Mr. McBride: I believe that is all, Mr. Examiner.

1019 *Redirect Examination by Mr. Haslett.*

Q. Mr. Chitty, just a couple more questions.

A. All right.

Q. If, as you state, you and your competitors were selling salt for the same price, $1.65 and you were paying $1.40 for it, and your competitor was paying $1.30 for the salt, buying it 10-cents a case cheaper than you were paying for it, would that affect your business?

Mr. McBride: I object to that question, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Well, here is the thing. For instance, I tried to point out a while ago, that as long as our price is $1.65 and our competitors are not less than $1.65 or $1.60, we will say, or $1.62, or $1.63, I don't think it would make very much difference what the cost to the competitor would be. The people we sell to are not concerned with what stuff costs us, they are concerned with what we charge them for it, for the item. Does that answer your question?

By Mr. Haslett:

Q. No, sir, it doesn't. I am talking about what it costs you and what it costs the competitor. If you knew it cost the competitor $1.30 for the same article you pay $1.40

1020 for—

A. I wouldn't buy the article if I knew it.

Q. You wouldn't buy the article?

A. No.

Q. Why wouldn't you buy it?

A. Because it has been my policy all my life not to handle an item that I feel sure that with other competitors I am not on an even basis, or reasonably so, certainly not 10-cents a case on items like salt.

Q. Why do you want to be on an even basis with your competitors?

A. So that we can, by adding a normal profit, be reasonably in competition with the people who sell. Most people have to do business on a profit, and you understand, I am trying, as I stated before, to make 15-cents on salt. We will take that as a basis. If your competitor tried to do the same thing and our customers were the same, there is very little competition on that item. Should he be willing to do business on less than 15-cents, then we would be deprived of the business, naturally, or a good portion of it.

Trial Examiner Purcell: Would you keep your voice up, Mr. Chitty, please?

The Witness: Yes, sir.

By Mr. Haslett:

Q. But the cost would have a determining factor
1021 on whether or not you were going to be competitive?

A. Oh, yes.

Mr. Haslett: I think that is all, sir.

Mr. McBride: I have no further questions.

Mr. Haslett: Thank you very much, Mr. Chitty.

(Witness excused.)

1022 Mr. Haslett: I will call Mr. Hollins back to the stand.

Trial Examiner Purcell: Let the record show that Mr. Hollins is being recalled at the instance of the Commission and has been heretofore sworn.

MILTON L. HOLLINS was thereupon recalled as a witness by the Commission, having been heretofore duly sworn, and testified further as follows:

Mr. Haslett: Mr. Examiner, I have no further questions of Mr. Hollins, and I will turn him over now to Mr. McBride for cross-examination.

Mr. McBride: I am a little embarrassed, Mr. Examiner, after my outburst this morning, I have decided I shan't cross examine Mr. Hollins either, so my due apology to the witness for coming back for a useless trip.

Mr. Haslett: You are excused, Mr. Hollins, thank you, sir.

(Witness excused.)

Mr. Haslett: I will call Mr. Edwards.

1023 I. H. EDWARDS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Your name is Mr. I. H. Edwards?
A. Yes, sir.
Q. And you reside in Jacksonville, Florida?
A. Yes, sir.
Q. And are you associated with the Daylight Grocery Company?
A. Yes, sir.
Q. And what position do you hold with that company?
A. I am president.
Q. You are president?
A. Yes, sir.
Q. And the Daylight Grocery Company is engaged in the business of selling groceries and allied products both at wholesale and at retail?
A. Yes, sir.
Q. How many retail stores are operated by the Daylight Grocery Company?
A. Eleven.
Q. Eleven retail stores?
A. Yes, sir.

1024 Q. And one of your principal competitors is the A&P Tea Company?
A. I wouldn't say. It is general, we have got quite a few of them in the same line of business.
Q. They are one of your competitors?
A. Yes, sir.
Q. And Winn & Lovett Company is another competitor?
A. Yes, sir.
Q. And in addition to those two you have numerous competitors such as independently owned retail stores?
A. Yes, sir.
Q. How far south does your company operate stores?
A. Well, our retail stores are only in Jacksonville.
Q. And in your wholesale outlet, do you sell your products outside of the city of Jacksonville?
A. Yes, sir.
Q. How far south do you go with those?

A. Well, we go to New Smyrnia and we go as far as Orlando, and go to Tallahassee, and we go into some parts of Georgia.

Q. In your territory covered in the Georgia area, are you in competition with Thomas & Howard Company?

A. Well, personally, I am not in contact with that thing directly. My salesman is, but we do work the same territory.

Q. I see, you work the same territory?

1025 A. Yes, sir.

Q. And do your salesmen work the same territory as C. D. Kenny Company?

A. Well, C. D. Kenny Company is out of business at present, but we used to be competitors.

Q. C. D. Kenny Company is out of business at present?

A. They are out of this territory.

Q. Were they formerly located in Jacksonville?

A. Yes.

Q. And they have withdrawn from this Jacksonville market?

A. They have withdrawn, yes.

Q. How long ago did that take effect?

A. I imagine that happened last year, some time last year.

Q. Up to the time that they did withdraw from this market, they were competitors of yours?

A. Yes, sir.

Q. As president of the company, are all of the transactions, and the sales, purchases, deliveries and office employees under your supervision?

A. Well, most of it; the biggest part of it.

Q. Your company purchases salt from the Morton Salt Company?

A. Yes, sir.

Q. And what type of salt does it purchase?

A. Well, most of the time we purchase nothing but

1026 the round package salt, and occasionally we purchase the flat package of competitive salt.

Q. When you say the round package, do you mean the blue label round package free running and iodized salt?

A. Yes, sir.

Q. And do you know the price that your company pays for that product, per case?

A. The price is $1.50, as far as my knowledge goes.

Q. And that has been in effect for how long?

A. Quite a long time, I don't think I can remember of any time there was a change in the price.

Q. Do you know the price at which your company resells the Morton round package free running salt at wholesale to your retailer customers?

A. Yes, sir.

Q. What price is that, sir?

A. $1.55.

Q. And what price does your company charge for the Morton round package free running and iodized salt per package through your retailer stores to the consuming public?

A. Generally, I think it is about 8-cents, two for 15.

Q. Eight-cents single and two for fifteen?

A. That is correct.

Q. Does your company receive any discounts or allowances from the Morton Salt Company upon its purchases?

1027 A. No.

Q. Does your company purchase on a carload basis?

A. Well, occasionally we do, but there wasn't any difference in price. The reason why we didn't purchase it, sometimes it was suggested, and it was the same price, and they just brought it in in pool cars.

Q. And did you receive any discount on the carload purchase?

A. No.

Q. Approximately how much salt does your company purchase from the Morton Salt Company per year?

A. I think the last time I looked at it, it was over 3,000 cases.

Q. 3,000 cases?

A. Yes, sir, of the round package.

Q. The round package salt?

A. Yes, sir.

Q. Is the price that your company pays for salt an important factor in its business?

A. Well, that is the only factor in our business, is the price.

Q. And the same is true of other products that you purchase?

A. That is right, sir. You see, I have got to explain that thing a little. You see, our business is mostly cash

1028 and carry business; mostly cash, not exactly cash and carry, because some places we deliver, and we charge them the difference according to the distance, but it is principally a cash and carry business, and the result is, we have got nothing else to offer with the exception of price, so we always price our merchandise according to what we pay for it.

Q. I see. Is your business affected by the fact that some of your competitors pay $1.40 per case for the round package free running and iodized salt, while at the same time you are charged by the Morton Salt Company $1.50 per case?

Mr. McBride: If the Examiner please, I object to that question.

Trial Examiner Purcell: Objection overruled. He may answer.

The Witness: Yes, I am almost sure it is.

By Mr. Haslett:

Q. And is it affected by the fact that some of your competitors would offer Morton's round package blue label salt at a 2-cent differential in price under the price that you are selling products of the same grade, quality and size for?

Mr. McBride: If the Examiner please, I object to that. There is no evidence in the record that it is offered at 2 or 3-cents less than this witness' price. There is a 1029 statement of fact to that effect in counsel's question, which I object to.

Mr. Haslett: I will be glad to clear it up to counsel's satisfaction.

By Mr. Haslett:

Q. Would your business be affected by the fact that one of your competitors would offer to sell to one of your customers, Morton's round package free running and iodized salt at a 2-cent differential in price under the price at which you were offering the product of the same grade, quality and size?

A. I couldn't sell it.

Q. Then, it would be affected?

A. It would be very much affected, because, as I stated before, our price is the only principle we have got to offer, and if somebody sells it for less money, we cannot sell it.

Q. You are now purchasing it for $1.50 and selling it for $1.55, is that correct, sir?

A. Yes.

Q. Who do you place your orders with for your requirements of Morton's round package and free running salt?

A. Well, that is between the Morton salesman and the broker.

Q. Does Morton's salesman call upon you?

A. Occasionally.

Q. And the broker, also?

1030 A. Most of the time they come together.

Q. They come together?

A. When they make a pool car, they come together and take my order. It was no question of purchasing, it was just a question of ordering it, because there wasn't any difference in price. The only thing was the question of the need, and we would order the amount we wanted and put it in a pool car.

Q. Did you ever request Morton to give you the same price that it was offering to your competitors?

A. Well, I understood it was one price for everybody.

Q. You didn't know anything about a discount?

A. I didn't know there were any two prices. The fact is, our price for pool car and straight car was the same thing, and I presumed it was the same thing for everybody.

Q. Is the Labry Brokerage Company the broker that contacts you on behalf of its principal, Morton Salt Company?

A. Labry Brokerage Company?

Q. Yes.

A. Yes.

Q. And then one of Morton's own employees calls upon you, is that correct?

A. Yes.

Q. How long has your company been purchasing from the Morton Salt Company?

1031 A. Well, quite a good many years, I believe. I know it is over six years in the location we are in now.

Q. Mr. Edwards, would your business be affected by the fact that one of your competitors receives a five per cent discount from the invoice price, or approximately a five per cent discount from the invoice price, on all of its purchases from the Morton Salt Company, which discount

is over and above the carload discount which is granted by that company?

Mr. McBride: If the Examiner please, I object to that question. I can't even follow it, and in the second place, I have my usual objection to that sort of a question.

Trial Examiner Purcell: Let us have the question read, please.

(The question referred to was read by the reporter.)

Mr. McBride: There is nothing in the record to that effect.

Trial Examiner Purcell: I don't recall.

Mr. Haslett: Mr. Examiner, the record is full of the fact that A&P Tea Company gets an additional five per cent discount on a $50,000 purchase. Now, it is in the form of exhibits, and the testimony of the president of this company. This man is in competition with the A&P Tea Company.

1032 Mr. McBride: I beg to differ with counsel on that, but I will let it go, it makes no difference to me.

Trial Examiner Purcell: I can't hear you, Mr. McBride.

Mr. Haslett: Does counsel take the position that that is not in the record?

Mr. McBride: As you stated it, it is not, no.

Mr. Haslett: That the A&P Tea Company do not get a five per cent additional discount on its purchases of $50,000 a year?

Mr. McBride: Let me enlarge on my position. This witness buys the blue can, according to his testimony, and nothing more. There is not a thing in the record about a five per cent discount on the blue can, and why it is appropriate for counsel at this time to ask this witness about any such hypothetical question as that, is more than I can see, in the light of the record.

Trial Examiner Purcell: Another five per cent that he is now referring to, if I understand it correctly, would bring the price down to $1.30?

Mr. Haslett: I don't know what another five per cent would bring the price down to.

Trial Examiner Purcell: The reason I asked that is that you questioned several of the witnesses this morning as to the $1.30 price, did you not, without objection

1033 from counsel?

Mr. Haslett: That is right.

Trial Examiner Purcell: The A&P are the only ones who would get the $1.30 price, is that correct?

Mr. Haslett: I am not taking the position that they would get that. The $1.30 price is just an arbitrary figure that I chose.

Mr. McBride: That is the reason I didn't object to it, he was just using an arbitrary example. There is nothing in the record to support that as a fact, and I didn't gather that counsel this morning was framing his questions in that fashion.

Mr. Haslett: I didn't mean to give the impression that anyone was paying $1.30 for it.

Trial Examiner Purcell: I gathered you had some foundation for it.

Mr. Haslett: Of course, I might have used $1.10 or 90-cents.

Trial Examiner Purcell: Surely. Let's get off the record a moment.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

Mr. McBride: I will withdraw my former objection and make it only in terms of my usual objection with respect to the effect of purchase price, Mr. Examiner.

1034 Trial Examiner Purcell: The objection is overruled. He may answer.

By Mr. Haslett:

Q. Would you like to have the question re-read now?

A. Well, you can ask it again, if you don't mind.

Mr. Haslett: Read the question back again, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I would say they would, any kind of privilege some other company has got against mine, will injure my business.

By Mr. Haslett:

Q. Your company purchases salt from the Morton Salt Company other than the round package blue label salt, does it not, sir?

A. Occasionally.

Q. Such as Kleer, No. 1 crushed rock salt?

A. Yes.

Q. And Kleer "C" grade rock salt?

A. Bulk salt, yes.
Q. And Kleer table salt?
A. Right.
Q. That is, the 5-cent package?
A. That is right.
1035 Q. You also purchase the block salt?
A. Yes, some. We have purchased some block salt.
Q. You say the Morton's round package blue label product is a staple product?
A. Well, it is a nationally advertised product.
Q. And has a consumer demand?
A. It has a consumer demand, yes.
Q. Is your business in any way affected by the fact that one of your competitors pays $1.35 per case for Morton's free running salt, while at the same time you are paying $1.50 per case for the same type of salt of the same grade and quality?
Mr. McBride: My usual objection.
Trial Examiner Purcell: Overruled. He may answer.
The Witness: Yes, sir. I would say almost positive. The only thing, I mentioned before, the only thing I have got to offer is the price, and if we have got to pay 15-cents more a package than anybody else, naturally we can't sell the product as freely as we could if we could buy them at the same price the competitor was buying them.
I want to clarify that answer. It is not a question whereby the competitor is using the 15-cent rebate. He may not use it in the salt business at all, because he may want to protect his manufacturer in order not to demoralize the price of salt, but he is liable to take the
1036 15-cents and use it for a different item altogether.
He may sell milk for less money, because the 15-cents makes it possible for him to do it.
Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's exhibit No. 52, except as to the quantity of the product, date, number of the invoice, consignee, destination and price, passed between the respondent, Morton Salt Company, and the Daylight Grocery Company of Jacksonville, Florida, who is a customer of the respondent, Morton Salt Company, and that said Commission's exhibit No. 52 is typical of such invoices for the sale of salt of the same

type that appears thereon that pass between the respondent herein and its customer, Daylight Grocery Company of Jacksonville, Florida, and that such invoices have in the regular course of the respondent's business, passed between respondent and its said customer, Daylight Grocery Company of Jacksonville, Florida, since the respondent began the sale of, and the said customer, Daylight Grocery Company of Jacksonville, Florida, began the purchase of the type of products as appears on Commission's exhibit No. 52.

Mr. McBride: That is correct.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commis-
1037 sion's exhibit No. 105.

(The document referred to was marked "Commission's Exhibit 105" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit No. 105 is a true and correct invoice of the Morton Salt Company, numbered 70501, under date of October 1, 1941, of commodities sold to Daylight Grocery Company of Jacksonville, Florida?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be admitted in evidence as Commission's exhibit No. 105 and so marked.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 105" was received in evidence.)

Mr. Haslett: I think that is all I have for this witness, and I will turn him over to Mr. McBride for cross-examination.

1038 *Cross-Examination by Mr. McBride.*

Q. Mr. Edwards, how long did you say your company has been in business here in Jacksonville?

A. Twenty-one years.

Q. Twenty-one years?

A. Yes, sir.

Q. And you have been connected with the company for approximately the same length of time?

A. From the beginning of its existence.

Q. I think you stated, also, Mr. Edwards, that your resale price on Morton's blue can to the retail trade, referring now to the wholesale business, was $1.55 a case, is that correct?

A. Yes, sir.

Q. Does anybody in Jacksonville sell it any lower than that?

A. Well, I am just trying to meet somebody else's prices.

Mr. McBride: I ask that the answer be stricken, Mr. Examiner.

Trial Examiner Purcell: Let it be stricken.

Mr. Haslett: Before the Examiner rules, I would like to be heard on these questions.

Trial Examiner Purcell: Well, Mr. Haslett, the inference of your remark is that I have been consistently
1039 ruling without hearing you. Now, the record doesn't bear out that statement in any way, shape or form.

Mr. Haslett: I don't mean that at all, but the Examiner rules so fast that he doesn't give me a chance to be heard on it.

Trial Examiner Purcell: The answer is obviously not responsive to the question.

Mr. Haslett: Well, that might be true, but give me an opportunity to be heard, Mr. Examiner, before you make a ruling, which is nothing but fairness. That is all I am asking for, is to be heard before you make your ruling.

Mr. Examiner, it is not my intention to make any insinuations that the Examiner hasn't been fair. He has been exceedingly fair in this proceeding, and has done a splendid job of it, but I do ask to be heard before the Examiner rules on questions that are very pertinent to the issues of the case.

Trial Examiner Purcell: I understand that. The Examiner will be very glad to hear you.

Mr. Haslett: I think the answer is responsive to the question. He asked him whether or not any other competitor sold at that price, and his answer was that he did so to meet competition, so obviously some other competitor is selling it at that price, and it is, therefore, responsive.

Trial Examiner Purcell: It doesn't necessarily
1040 follow at all, Mr. Haslett.

Mr. McBride: As a matter of fact, Mr. Examiner, that was not my question, in any event.

Trial Examiner Purcell: It was not your what?

Mr. McBride: I say, as a matter of fact, that was not my question, in any event, as stated by counsel, I asked him if anybody sold below $1.55.

Trial Examiner Purcell: Let the question and answer be read.

(The question and answer referred to was read by the reporter.)

Mr. Haslett: That is just the way I stated it, and I think it is very responsive to the question. If counsel doesn't get the answer that he wants, why, that is nothing here.

Trial Examiner Purcell: I will strike the answer as not being responsive to the question.

Mr. Haslett: I take an exception to the Examiner's ruling.

Trial Examiner Purcell: Very well.

By Mr. McBride:

Q. I wonder, Mr. Edwards, if you would answer the question as to whether or not anybody in Jacksonville sells below $1.55 per case on Morton's blue can?

A. The only thing I can answer is this way, that I
1041 know somebody else is selling it at the same price, $1.55.

Mr. McBride: Mr. Examiner, I will have to make the same request again. I don't wish to be troublesome with the witness, but I have asked a specific question whether anybody in Jacksonville sells below $1.55, and the witness says he knows somebody that sells it at the same price. That has no bearing upon my question at the moment.

Trial Examiner Purcell: Mr. Haslett, there is an objection before the Examiner.

Mr. Haslett: I haven't anything to say, Mr. Examiner, you can rule on the objection.

Trial Examiner Purcell: I will strike the answer.

Now, the witness will please answer counsel's question.

The Witness: Yes, sir.

Mr. McBride: Mr. Reporter, read the last question back.

(The question referred to was read by the reporter.)

The Witness: Does counsel still want me to answer it?

By Mr. McBride:

Q. Yes, if you would, please.

A. To my knowledge, no, sir.

Q. Approximately how many cases of blue can do you buy a year, Mr. Edwards, as best you can remember?

1042 A. As I mentioned before, I think, it was over 3,000 cases last year.

Q. About 3,000 plus?

A. 3,000 plus, the round package.

Q. Now, has your volume of purchases on Morton's blue can been about 3,000 cases for the last five or six years?

A. I couldn't answer that intelligently.

Q. You don't recall?

A. I don't recall. The only thing I could answer is in this manner, our business has shown considerable growth in the last few years, and it is possible that in previous years we didn't do as much business with the Morton Salt people.

Q. When you say your business, you mean, your general wholesale business?

A. Our general wholesale business.

Q. That would be true, as far as you can recall, of your general Morton blue can business, having in mind the general growth of your whole business, is that right?

A. Well, I imagine, as I said, I have done more business with Morton, on account of our general business showing a growth.

Q. Do you recall, Mr. Edwards, approximately how long your $1.55 price has been in effect?

A. Our price?

1043 Q. Yes, to the retail trade. You have had that $1.55 for the last two or three years, haven't you?

A. I couldn't say exactly, but if you will permit me to explain, we have got a policy where we price all merchandise according to cost, with a definite percentage on each and every item alike. We don't pick one item out and make it three per cent and the next item fifteen per cent. We try to sell everything on a level cost plus, and we use the same plus.

Q. Whether it is salt, sugar, potatoes, or anything else?

A. That is right. If it cost us $1.45, that is our cost, and we add 3 per cent to it, and it makes $1.50, we will say.

Q. And that is your general theory of merchandising?

A. That is our general theory of doing business.

Q. And your theory behind that is to get volume, or turnover?

A. Well, several things. The volume is one thing and the principle is the second object, because we try to sell to a merchant buying $10 worth of merchandise just as cheap as the person who buys $100 worth of merchandise. We try to keep them in business, if possible.

Q. Now, can you make an estimate, Mr. Edwards, of approximately what percentage of your annual dollar volume is accounted for by the salt business, in total, now, I am referring to?

1044 Mr. Haslett: I object to that, Mr. Examiner. It is beyond the scope of the direct examination, and is also irrelevant and immaterial to the issues in this case.

Trial Examiner Purcell: I will overrule the objection, the same as I did with the preceding witness.

Mr. Haslett: Note an exception. This is, I think, the first time he has asked the dollar volume of business.

Trial Examiner Purcell: I think he brought that out at quite some length with Mr. Chitty.

Mr. Haslett: Not the dollar volume.

Trial Examiner Purcell: Well, percentage.

Mr. Haslett: It didn't have anything to do with the dollar volume.

Mr. McBride: I am sorry, I am only seeking the percentage here, and I believe I stated it in terms of percentage. I don't care about absolute dollars.

Trial Examiner Purcell: You said percentage based on the dollar volume. Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

By Mr. McBride:

Q. Your total salt business, in other words, I don't care how many dollars in salt business you do a year, or what the total dollar volume is for all of your commodities, but I am trying to find out whether half of one per cent or a fourth of one per cent of your total dollar vol-

1045 ume per year is accounted for by your whole salt business?

A. I don't think I could answer that question intelligently. Salt, I would say, is a minor item in our business, as compared with all of the rest of the items put together, so that would be merely a guess if I would name a percent.

Q. I see. I think you said, also, Mr. Edwards, that your business would be adversely affected if somebody pur-

chased the Morton's blue can at $1.40 a case, while you were paying $1.50 a case, is that correct?

A. Yes, sir.

Q. And would your answer be the same if the person who presumably is buying at $1.40 a case while you were paying $1.50 a case, also resold to the retail trade at $1.55 a case?

A. Would that affect our business?

Q. That is correct.

A. If his business will be the same type of business as mine, it wouldn't.

Q. In other words, as long as his resale price was the same as yours?

A. On the same type of business. Of course, a credit jobber, with the service some of them give, it would.

Q. Because he would then be giving away credit and delivery service on top of the low turn-over price?

A. That is right, sir.

1046 Q. Then, I will put it in terms of a similar cash and carry business, such as you operate, so that we have your business, a cash and carry business, and a competitor cash and carry business, and they both sold at $1.55, you wouldn't be adversely affected by that, would you?

A. Not on that particular item, unless, as I said before, unless he used the 10-cents he is getting out of the salt and he is competing with me on a particular item which I cannot meet his price. He could take the 10-cents and apply it to milk.

Q. Has that ever happened?

A. Yes, that is the general principle straight through the grocery business. That is part of the reason why the smaller merchants couldn't stand up against the chain stores, because they used exactly this kind of money in different commodities, and naturally made it impossible for the small merchants to compete with them.

Q. I believe you stated that you had competed rather successfully, that as near as you can recall, your volume had increased on your whole line of business, as well as on the salt business?

A. Well, our jobbing business is not very old. Our jobbing business is only about five years old, and most of our discussion is with reference to the jobbing business.

Q. That is correct.

1047 A. And naturally, when a person goes in business, either he makes progress or he goes out of business. Our policy was fairly successful, because there was a principle behind it, as I mentioned, and I would like everybody to know it, there was principle involved in it, in order to see if it was possible to keep the small merchants in business. In the last years, up to five years ago, they were getting less and less all the time, it was almost a question that not many were going to be left open for business. In fact, the jobbing business, the person who went in it 15 years ago, more than 75 per cent are out of business because they lost their customers and now, even though there are not as many jobbers, even the same volume per jobber is less than it was 15 years ago.

Q. Well, Mr. Edwards, I am referring to Commission's exhibit No. 105, which has been introduced in evidence. That exhibit is an invoice from the Morton Salt Company to your company, the Daylight Grocery Company. At the top of the list is 25 sacks, 100 pounds Kleer "C" grade rock salt. Which of your competitors handles that particular item of Morton salt? Do you know?

A. Well, sack salt is not sold by any brand. The only thing is a question of grade. Every jobber, I imagine, handles "C" grade salt, and it wouldn't make any difference to the jobber if it was Morton salt or any other
1048 brand of salt.

Q. Let me return to my question again, Mr. Edwards. Which of the jobbers in Jacksonville handles Morton's Kleer "C" grade rock salt, such as that described as item 1 on the exhibit to which I have just referred?

A. I don't believe I could answer that question at all.

Q. You don't know whether anybody in Jacksonville other than yourself handles it, is that correct?

A. Well, I don't handle it regular. Sometimes I handle one manufacturer's salt and sometimes another manufacturer's salt. It is just occasionally, accidentally, perhaps, that I need 25 sacks of 100 pound salt, and I tell them to put it in the same car.

Q. Now, referring to item 2, Mr. Edwards, 25 sacks of 100 pound Kleer fine salt. Now, which of the jobbers in Jacksonville handle Morton's 100 pound sacks of Kleer fine salt, if you know?

A. That would be the same answer.

Q. You wouldn't know whether anybody handles it, other than yourself?

A. No.

Q. So that you may be the only one handling Morton's 100 pound bags of Kleer fine salt in Jacksonville?

A. Well, I wouldn't think so.

Q. But you wouldn't know, one way or the other?

1049 A. I wouldn't make a statement like that.

Trial Examiner Purcell: Mr. McBride, he said he didn't know.

By Mr. McBride:

Q. Would that same answer be true, Mr. Edwards, with respect to the third item, 25 cartons of 6-10 pound Kleer table salt?

A. Yes, sir.

Q. The same answer?

A. Yes, sir.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Edwards, I believe you stated your price was $1.55 wholesale for the round package salt per case?

A. Yes.

Q. Was there some one of your competitors selling salt to your customers at $1.55 per case at all times that you were selling it at $1.55 a case?

A. As far as I know, there was.

Q. And that is true today, sir?

A. Yes, sir.

Q. Now, Mr. McBride brought out that the item of salt in your business was a minor item. Isn't it true that any single item that makes up a wholesale grocery busi-

1050 ness is a minor item?

A. That is right, sir. Of the 3,000 items in all groceries, there isn't any major item that puts you out of business or keeps you in business. The only thing I can explain about my price of $1.55 on salt is that we are trying to make 3 per cent. In other words, that was the actual price the way he published it to the customers, that we sell cost plus 3 per cent. Our price was $1.50 per case plus 3 per cent, that made $1.55, and that is how we arrived at that price. We were definitely forced to sell at that price, because we have some competitors that have been

selling Morton salt at $1.55. It was really less than we would like to sell it for, because there was no cash discount on salt, therefore, ordinarily we would really sell it for 2-cents more. Now, according to our policy we would sell it at $1.55 plus 3 per cent, but being there is no cash discount, we add 2-cents more to it, but we find the competitors sell at the same price, and as a result we have to sell Morton's salt for $1.55.

Q. And you say you don't receive any cash discount from Morton?

A. So I understand it, no cash discount on salt, carloads or less than carloads.

Q. The price that you pay for your various products is a very important factor in your business, isn't it, sir?

1051 A. That is the only thing that matters in our business, is the price, what we pay for it.

Q. Then, there would be a definite injury to your business by the fact that one of your competitors was paying $1.40 a case for salt, while at the same time you were paying $1.50?

A. I don't think there is any question about that.

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

By Mr. Haslett:

Q. You may answer.

A. There is no question but what there is a positive injury.

Q. There is a positive injury?

A. If a competitor prices merchandise for less money, yes.

Q. I believe you stated one of your competitors is now selling for $1.55, which is the same price that you are selling for?

A. Yes, sir.

Q. Would you have the same definite adverse injury to your business by the fact that a competitor was paying $1.40, selling it for $1.55, while at the same time you were paying $1.50 and selling it for $1.55?

Mr. McBride: I object to that, if the Examiner please, for the simple reason the so-called competitor at $1.55
1052 has not even been identified yes, and now counsel states as a fact in his question that he is paying less than the witness' company.

Trial Examiner Purcell: Of course, the answer is that upon direct examination, and upon cross, either one or both of you had an opportunity to identify the competitor.

Mr. McBride: True, but I wasn't interested in it at that function, and now counsel raises this question in a factual form.

Trial Examiner Purcell: I don't know, of course, sitting up here, what you are interested in, Mr. McBride, I am not a mind reader. Mr. Haslett, what do you have to say to the objection?

Mr. Haslett: Mr. Examiner, I know who the competitor is and I could develop it at this time, but I want to develop it through the competitor himself. However, if the Examiner wants me to, I can ask this witness what the name of the competitor is that is selling it at $1.55.

Trial Examiner Purcell: I don't want you to do that. I don't want you to do anything but put your case on as you see fit, but I must rule that your question is purely anticipatory at this time. I will uphold that objection.

By Mr. Haslett:

1053 Q. What is the name of the competitor that is selling salt at $1.55 to the retailers?

A. In the city of Jacksonville?

Q. Yes.

A. Setzer sells it at that price, Setzer's warehouse, and out in the state we run into quite a bit of competition with Thomas & Howard Company.

Q. With Thomas & Howard Company?

A. Yes.

Q. Now, I will repeat the question: Is your business affected by the fact that Thomas & Howard Company purchase Morton Salt at $1.50 a case and resell it at $1.55 a case, while at the same time you purchase it for $1.50 a case and sell it for $1.55 a case?

Mr. McBride: Excuse me, may I have that question read back, Mr. Reporter?

(The question referred to was read by the reporter.)

By Mr. Haslett:

Q. Is it clear now?

A. Well, both on an even basis, I would say no. If they are both paying the same price, I would say it is just naturally not a competitive item, if he pays the same price I do.

Q. I believe you misunderstood the question.

A. Maybe I did.

1054 Q. I said, is your business affected by the fact that Thomas & Howard pay $1.40 a case and resell it at $1.55—

Mr. McBride: You said $1.50 in your last question.

Mr. Haslett: I am sorry if I said that, I didn't mean to say it, because the question wouldn't have any significance.

Trial Examiner Purcell: I so gathered.

By Mr. Haslett:

Q. I will repeat the question and place it in this form: Is your business affected by the fact that Thomas & Howard pay $1.40 a case and sell the product at $1.55, while at the same time you pay $1.50 a case and sell it at $1.55?

Mr. McBride: The usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. He may answer.

The Witness: I would say yes.

By Mr. Haslett:

Q. And would that effect be adverse on your business?

A. I don't get it clear in my mind what that means.

Q. Would it be detrimental to your business?

A. Well, I have got to say it in this manner, detrimental, it has got to be a very severe injury, and could be a minor injury. I wouldn't say that that is something that could put a person out of business, but it could injure his

1055 business considerably.

Mr. Haslett: I think that is all, Mr. Edwards.

Mr. McBride: Just one final question, Mr. Examiner.

Recross Examination by Mr. McBride.

Q. Do you know what Thomas & Howard pay for Morton's blue can per case?

A. I don't, sir.

Mr. McBride: I believe that is all.

(Witness excused.)

Mr. Haslett: I will call as my next witness Mr. Brodeur.

ASA E. BRODEUR was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Brodeur?

A. Asa E. Brodeur.

Q. And do you reside in Jacksonville?

A. I do.

Q. And in what business are you engaged, sir?

1056 A. The food business, Great Atlantic & Pacific Tea Company.

Q. What position do you hold with the Great Atlantic & Pacific Tea Company?

A. Buyer.

Q. And how long have you been connected with the A&P?

A. In the buying capacity?

Q. Yes.

A. Seventeen years.

Q. And the business of the Great Atlantic & Pacific Tea Company is the operation of retail food stores for the sale and distribution of food and allied products to the consuming public?

A. That is right.

Q. Now, how many stores are operated by your company in the Jacksonville area?

A. Approximately 19.

Q. And do they have stores in other cities throughout the state?

A. Yes, sir.

Q. Do they have stores in Tampa, Florida?

A. Yes, sir.

Q. And do they have stores in Miami, Florida?

A. Yes.

Q. How many stores are located in Tampa, if you know, sir?

1057 A. I wouldn't know offhand, I would just have to give you an estimate.

Q. Just an estimate would be sufficient, sir.

A. Approximately 15, I would estimate.

Q. And how many in Miami?

A. Around 11.

Q. And do you do the purchasing for the stores in Tampa and Miami, in addition to the Jacksonville outlets?

A. We would term it ordering. The purchasing has, of course, all in the sense been made. We place our orders here for the Jacksonville warehouse, and we also place it—we also place them for the Tampa warehouse, which is a subwarehouse, and the Miami warehouse, we have a representative down there that places his orders there. In Tampa and Miami, it wouldn't be in the term of purchasing, but ordering.

Q. Do the orders from the Miami warehouse come through the Jacksonville office?

A. They are paid here, and a copy comes through this branch, but there is no pricing in the Miami warehouse or the Tampa warehouse.

Q. All of the pricing is done here, sir?

A. Yes.

Q. And when I say "here," I mean in Jacksonville.

A. That is correct.

1058 Q. Has your company any competitors in the Jacksonville area?

A. Yes, sir.

Q. Would you name some of your principal competitors?

A. In the chain outlets, it would be Winn & Lovett, Daylight, Setzer's and, of course, the independent stores, large and small.

Q. And there a number of those located in Jacksonville?

A. Yes, sir.

Q. And do you know the names of some of your competitors in Tampa?

A. Not very well, I am not familiar with that.

Q. Would the B&B Grocery be one of them?

A. I think so.

Q. And Margaret Ann?

A. Yes, sir.

Q. And would you have Margaret Ann in Miami, also, sir?

A. I am not familiar enough with that to answer.

Q. But you do have competitors in all of those areas?

A. Yes, as a matter of fact, I think Winn & Lovett is in several of those cities, especially on the East Coast.

Q. Is Winn & Lovett in Tampa, also?

A. I don't think so. They may be, I am not sure of that.

Q. Do you place orders with various salt companies for your company's requirements of various grades of salt?

1059 A. Yes, sir.

Q. Have you had occasion to place orders with the Morton Salt Company for round package free running salt?

A. Yes, sir.

Q. And also the iodized salt?

A. Yes, sir.

Q. Do you know the price which your company pays the Morton Salt Company for its round-package salt per case?

A. $1.50 a case.

Trial Examiner Purcell: What was that?

The Witness: $1.50 a case.

By Mr. Haslett:

Q. Has that price been in effect for a long time?

A. Quite some time.

Q. Do salesmen of the Morton Salt Company call upon you to solicit your orders?

A. Yes. Of course, that type of merchandising, they don't call regularly, they don't have to. We can give them the business over the telephone, or they do come in occasionally for contact, and also at times for orders.

Q. What do you mean by "that type of merchandise"?

A. Well, we might say merchandise that we just order regularly.

Trial Examiner Purcell: Speak a little louder please, Mr. Witness.

1060 The Witness: I will try to, yes.

By Mr. Haslett:

Q. Is it a staple product?

A. Yes, sir.

Q. Nationally advertised brand, the blue label package?

A. Yes, sir.

Q. It has a large consumer demand?

A. Well, I don't know, I can only speak for quantities in which we buy. I don't know whether that would be the answer. We buy it regularly, and have been for sometime.

Q. Does your company do any promotional or advertising work in connection with the sale of Morton's salt, the round package blue label salt to the consumer?

A. I wouldn't be in a position to answer that, I don't know. I would just have to assume that, and I would rather not answer it.

Q. Does your company receive any discount or allowance of any kind from the Morton Salt Company upon its purchases?

A. Through this warehouse, we receive 10-cents per case.

Q. You receive 10-cents per case for each case of Morton's blue label round package free running and iodized salt?

A. That is correct, sir.

Q. Do you know how many cases of Morton's round package salt was purchased by your company in the Jacksonville branch for the Tampa area?

1061 A. Tor the Tampa area?

Q. Yes.

A. For any particular year?

Q. What years have you, sir?

A. Well, I have 1939 and 1940 here.

Q. I would like to have it for both 1939 and 1940, sir.

A. In the Tampa area, 2,170 cases of free running and iodized salt, that is, in the round package.

Q. For what year, sir?

A. 1939.

Q. And how many cases for 1940?

A. In 1940, a total of 2,525.

Q. That is, 2,525 cases of both free running and iodized salt?

A. That is correct.

Q. And for the year 1940 in the Tampa area?

A. Yes, sir.

Q. Now, how many cases of Morton's round package free running and iodized salt was purchased for the Miami area for the year 1939?

A. 1,305 cases.

Q. And for the year 1940?

A. 1,759.

Q. Have you figures there for the Jacksonville area?

A. Yes, sir.

1062 Q. How many cases were purchased in the Jacksonville area?

A. In 1939, 4,550, and in 1940, 5,141.

Q. And you received a 10-cent allowance from the Mor-

ton Salt Company on each of those cases purchased for resale through Tampa, Miami and Jacksonville?

A. That is correct, sir.

Q. Do you know whether or not your company receives any other discount or allowance from the Morton Salt Company?

A. I do not.

Q. Other than the one you have just mentioned?

A. I do not, sir.

Q. What is the resale price charged by your company for one package of Morton's round package blue label and free running salt to the consumer through one of your outlets in the Jacksonville area?

A. The regular stores, 10-cents a package.

Q. And how about the super markets?

A. 7½ cents.

Q. How many super markets do you operate in the Jacksonville area?

A. Four. That is, when I say the Jacksonville area, I mean Jacksonville proper.

Q. I see, sir, and is that price in effect in the Tampa area, also?

1063 A. I would have to answer, I think so. I am not familiar with the retailing like I am with the purchasing end of it. We have a sales man that has that duty, and of course, I don't get into that so much, so I will have to confine my statement to the Jacksonville area. I know it is here.

Q. You wouldn't know about the Miami area?

A. I wouldn't be positive, no, sir.

Q. But you know that it is 7½-cents in the super markets here and 10-cents in the regular stores?

A. That is correct, sir.

Q. Does your company do any advertising of the round package free running salt in local newspapers?

A. I don't know, sir. That is handled by the sales department, and I wouldn't know positively.

Q. Does your company purchase other types of salt other than the round package free running and iodized salt from the Morton Salt Company?

A. At times, yes.

Q. Have you any figures there to show the number of bags or cases of other types of salt in the Jacksonville area purchased during the years 1939 and 1940?

A. There were no others than the round packages in the Jacksonville area.

Q. For either of those years?

A. That is right, sir.

1064 Q. How about the Tampa area?

A. In the Tampa area, there was, in 1939, four cases of tender quick, and in 1940, there was five cases of tender quick, 230 cases of ice cream and 105 cases of table salt, or the flat package.

Q. How about the Miami area?

A. The Miami area, in 1939, there was nine cases of tender quick, 50 cases of flat package and 35 cases of the ice cream salt. In 1940, four cases of tender quick, 50 cases of flat package and 35 cases of ice cream salt.

Q. You don't know whether or not your company received any discount on the items you have just mentioned in those areas from the Morton Salt Company?

A. I will have to check back just a second, please. It shows 5-cents a case discount Kleer flat packages. I think that is described as points, I don't know whether you would call it a discount, I guess you would. I believe that is the price, though, that was given to the trade generally.

Q. A 5-cent discount on the Kleer table salt per package?

A. That is what it shows here.

Q. That is per case, isn't it, sir?

A. That is right, and the tender quick, I think that is what it is, that is net, no discount on it.

Q. That is, through the Jacksonville office?

1065 A. Yes, sir.

Mr. Haslett: I think that is all, Mr. Brodeur. Your witness, Mr. McBride.

Mr. McBride: I only have two or three questions, Mr. Brodeur.

Cross-Examination by Mr. McBride.

Q. How long have you had super markets in Jacksonville?

A. Approximately close to two years.

Q. It has been very recent that you opened up the super markets?

A. Yes, sir.

Q. I think you stated that the price per package of

Morton's blue can in your regular stores was 10-cents, is that correct?

A. That is correct.

Q. And 7½-cents in the super markets?

A. That is right.

Q. The super market, as I understand it, is a self-serving cash and carry arrangement, is that correct?

A. That is correct.

Q. Whereas in the regular markets you have clerks waiting on the trade?

A. That is correct.

Q. Do you know how long the 7½-cent price has 1066 been in effect in the super markets?

A. I think just about as long as the super markets have been operated. I would estimate approximately in 1941.

Q. And prior-to that, when you had your regular stores, it had been 10-cents a package?

A. As far as I know and the records I saw. I can only go back as far as 1941. Those are the records I saw.

Mr. McBride: I believe that is all.

Mr. Haslett: No further questions. Thank you very much, Mr. Brodeur.

(Witness excused.)

Mr. Haslett: I will call Mr. Blitch.

L. H. BLITCH, was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Please state your full name for the record?

A. L. H. Blitch.

Q. And do you reside in Jacksonville, Florida?

A. Yes, sir.

Q. In what business are you engaged, sir?

A. Winn & Lovett Grocery Company.

Q. And what position do you hold with Winn & Lovett?

1067 A. Buyer.

Q. And how long have you been buyer for Winn & Lovett?

A. Five years.

Q. And what business is engaged in by Winn & Lovett?
A. Well, chain store groceries.
Q. And do they sell groceries and allied products in their wholly owned retail stores direct to the consuming public?
A. That is right.
Q. What are your duties as buyer for the Winn & Lovett Company?
A. We handle the purchasing of all the groceries and also the pricing, in my office.
Q. The pricing of them, also?
A. Yes, sir.
Q. Does your company have any competitors?
A. Yes, sir.
Q. Would you name some of your competitors, please?
A. A&P; Daylight, Setzer's, and the independents.
Q. And is that in the Jacksonville area you have reference to?
A. That is in the Jacksonville area.
Q. Does your company operate stores in any other area other than the Jacksonville area?
A. Yes, we have approximately 80 stores in Flor-
1068 ida and south Georgia.
Q. Florida and south Georgia?
A. Yes.
Q. How many stores do you operate in Jacksonville?
A. Thirteen, I believe, is correct.
Q. And how many in Tampa? Do you operate in Tampa, sir?
A. Not in Tampa proper; around Tampa, some of the cities around Tampa.
Q. How many stores are operated around Tampa, sir?
A. About 10.
Q. And do you operate in Miami, also, sir?
A. No, we operate above Miami. Hollywood is as far south as we go.
Q. Has the company at any time operated in Miami?
A. Yes, sir.
Q. When did they cease to do business there, sir?
A. About two years ago, I believe it is.
Q. What caused that, sir?
A. We sold our four Lovett stores to the Economy Wholesale Grocery Company.
Q. The Economy Wholesale Grocery Company?

A. Yes, sir.
Q. And they now operate the stores in Miami?
A. Yes, sir.
Q. How many stores do you operate in Georgia?
1069 A. Nine, I believe, offhand.
Q. Could you name the towns where they are located, sir?
A. Yes, Brunswick, Valdosta, Waycross, Moultrie, Thomasville, and I believe that covers them.
Q. Does your company sell salt through its retail stores to the consumers?
A. Yes, sir.
Q. And does it purchase any of this salt that it resells from the Morton Salt Company?
A. Yes, sir.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. The two pound round can, plain and iodized.
Q. Is that the blue label salt?
A. Yes.
Q. What price is paid by your company for that particular type of salt?
A. $1.50 a case.
Q. What is the price charged by your company to the consumer through its retailer owned outlets?
A. We have two prices, three for a quarter in our regular store, and 7½-cents in our super store.
Q. Three for a quarter in your regular stores, and 7½-cents in the super markets?
A. That is right.
1070 Q. And how many super markets do you operate, sir?
A. I think we figure 25, approximately, super markets.
Q. How many are in Jacksonville?
A. Well, all of them in Jacksonville are considered super markets, 13.
Q. Here, and they are [redacted] considered super markets?
A. Yes, sir.
Q. So, the super market price of 7½-cents would be in effect in all of the Winn & Lovett stores in the Jacksonville area?
A. That is right.
Q. And how about the Tampa area, are they considered super markets?

A. Well, it varies. We have one in Winter Haven, for instance, that is a super market, but Bartow would be a regular store.

Q. How about up in Georgia, up in the Georgia area, have you any super markets there?

A. No, most of those stores are the regular stores.

Q. And they are selling Morton's round package salt at three packages for a quarter?

A. That is right.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. Ten-cents per case.

1071 Q. And how often is that received?

A. Annually.

Q. Once a year?

A. Yes, sir.

Q. Does it purchase any other type of salt from the Morton Salt Company other than the round package salt?

A. No, we haven't purchased anything but the round can in some years.

Q. Does your company do any advertising or promotional activity through its retailer owned stores in connection with the resale of Morton's round package salt to the consumer?

A. Yes, we occasionally put Morton's salt in our newspaper and handbill ads.

Q. How much is paid to your company by the Morton Salt Company for this service?

A. No payment.

Q. It is free of charge?

A. That's right.

Q. Is that done with other products, also?

A. Yes, sir.

Q. Do the salesmen of the Morton Salt Company promote the sale of Morton's round package salt through any of your retailer owned stores?

A. Not to any extent. They occasionally have a

1072 salesman in our store for a store sale, but that is very rare.

Q. Do they furnish you with any counter displays or window displays?

A. I wouldn't know. It isn't handled through my office. The salesmen are permitted occasionally to go in the stores,

and with the manager's permission, to put up any advertising material they may have.

Q. Is there any legal or corporate connection between your company, the Winn & Lovett Company, and the Economy Wholesale Grocery Company?

A. None that I am aware of.

Mr. McBride: If the Examiner please, I object to that question, because it calls for a legal conclusion from this witness. I think counsel should be permitted to ask if there is any connection, and let the witness describe it.

Trial Examiner Purcell: We have had the same question up before.

Mr. Haslett: Is he permitted to answer the question, Mr. Examiner?

Trial Examiner Purcell: There is an objection. I want to hear from you on it.

Mr. Haslett; Well, I have stated my position before on this. This man is connected with the Winn & Lovett Company, and he is in a position to testify to this.

1073 It is not a question of law at all, it is a question of fact.

Trial Examiner Purcell: You asked if there was any legal connection. That is a question of law, ipso facto. I will uphold the objection. You may inquire as to what connection in fact there may be between the two companies.

By Mr. Haslett:

Q. Is there any connection between the Winn & Lovett Company and the Economy Wholesale Grocery Company?

A. The only connection there is, is that Mr. A. D. Davis, our president, is the brother of the three other Davis boys who operate the Economy Wholesale Grocery Company in Tampa and Miami. We exchange ideas, and that is all. To my knowledge, there is no connection other than that.

Q. Is there any connection between your company, that is, the Winn & Lovett Grocery Company, and the Hagin-Peters Grocery Company?

A. No, sir.

Q. Are there any brothers connected between those two firms?

A. No, sir.

Q. No blood relationship?

A. No, sir.

Q. Does the Winn & Lovett Grocery Company place

orders with the Morton Sale Company for the Econ-
1074 omy Wholesale Grocery Company's requirements of Morton's round package free running salt?

A. No, sir.

Q. It does not, sir?

A. No, sir.

Q. Does the Winn & Lovett Grocery Company make payment to the Morton Salt Company for the requirements of the Economy Wholesale Grocery Company's purchases of round package free running salt to the Morton Salt Company?

A. Yes.

Q. Why is that done, Mr. Blitch?

A. We place orders, or rather they place orders in Tampa and Miami, and they are billed to us in order to work on our total purchases.

Q. In order for the Economy Wholesale Grocery Company to get a 10-cent discount per case?

A. That is right.

Q. And that is true of the Economy's branch at Tampa and also at Miami?

A. Yes, sir.

Q. Does the Winn & Lovett Grocery Company place orders with the Morton Salt Company for Hagin-Peters' requirements of Morton's round package salt?

A. No, sir.

Q. Is payment made to the Morton Salt Company
1075 by the Winn & Lovett Grocery Company for Hagin-Peters' requirements?

Mr. McBride: If the Examiner please, I will object to that. Again we have the same question of one company doing something with or to the Morton Salt Company for somebody else, and Mr. Hagin testified this morning, apparently, that he purchased certain items in the salt line, including the blue can, from Winn & Lovett. I object, in view of that testimony, to counsel's questions of this witness.

Trial Examiner Purcell: Do you wish to answer on the record, Mr. Haslett?

Mr. Haslett: The question is whether or not payment is made to the Morton Salt Company by the Winn & Lovett Grocery Company for Hagin-Peters' requirements. I can't see any reason for objection to that question. It is perfectly relevant and material to the case.

Mr. McBride: The implications, of course, Mr. Examiner, are that Winn & Lovett is either the agent for Hagin-Peters or the agent for Morton Salt Company, as framed by counsel. The testimony this morning was that Hagin-Peters simply purchased from Winn & Lovett, and that was the end of it.

Trial Examiner Purcell: He is asked to testify to a fact. Now, if certain implications may be drawn from that fact, if it be a fact, that can't be helped. I will over-1076 rule the objection.

The Witness: Well, in answering that question, we sell salt to the Hagin-Peters Company and bill them on our stationery. The Morton Salt Company doesn't enter into it at all.

Trial Examiner Purcell: Now, read counsel's question back to the witness.

(The question referred to was read by the reporter.)

The Witness: The only way I can answer that is by saying that if we buy 1,000 cases of salt, and Hagin-Peters take 200 of that, we pay Morton Salt Company for the 1,000 cases of salt, and Hagin-Peters will pay us for the 200, if that answers the question.

By Mr. Haslett:

Q. How long has the arrangement been in effect whereby you would sell Morton's round package salt to the Hagin-Peters Company and allow them a 10-cent discount?

A. I don't know. It was in effect when I came with the company five years ago.

Q. And if is in effect now, isn't it?

A. It is.

Q. Do you sell any other type of salt to Hagin-Peters other than the round package salt?

A. No, sir.

Q. Does Hagin-Peters purchase 5,000 cases of 1077 Morton's free running salt during a 12 consecutive months' period?

A. No, sir.

Q. Is the same true as to the Economy Wholesale Grocery Company's branch at Tampa?

A. Yes, sir.

Q. And also as to the Miami branch?

A. Yes, sir.

Q. Has the Winn & Lovett Company any warehouse in Tampa, Florida?

A. No, sir.

Q. Has it any in Miami, Florida?

A. Not at the present time. We did have until two years ago.

Q. Did you have it in 1941, last year?

A. No, sir.

Q. Did you have one in Orlando, Florida?

A. No, sir.

Mr. Haslett: Mr. Reporter, I hand you four documents and ask that they be marked for identification as Commission's Exhibits 106-A, B, C, and D.

(The documents referred to were marked "Commission's Exhibits 106-A, 106-B, 106-C, and 106-D" for identification.)

By Mr. Haslett:

Q. Mr. Blitch, I hand you what has been marked 1078 for identification as Commission's Exhibit 106-A, B, C, and D, and ask you to describe 106-A, if you will, sir?

A. This is an invoice from the Morton Salt Company.

Q. Has it a number on it, sir?

A. 94404.

Q. And a date?

A. Dated January 29th.

Q. What year, sir?

A. 1942.

Q. I hand you Commission's Exhibit 106-B, and ask you to state what that is, sir?

A. That is an acknowledgment from the Morton Salt Company, dated January 23, 1942, to the Winn & Lovett Grocery Company.

Q. And Commission's Exhibit 106-C?

A. It is a credit memorandum from the Morton Salt Company to Winn & Lovett Grocery Company, dated January 20, 1942.

Q. And 106-D?

A. That is a list by months of figures for Tampa, Miami, Jacksonville and Orlando, of Winn & Lovett Company, Jacksonville, Florida.

Q. Purchases of free running salt?

A. I assume so, although it isn't written on the copy.

Q. The figures, or the figure, appearing on Commission's Exhibit 106-D in dollars and cents is the same
1079 figure that appears on Commission's Exhibit 106-C?

A. Yes.

Mr. Haslett: I offer them, Mr. Examiner, in evidence; that is, Commission's Exhibits 106-A, B, C, and D.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be admitted in evidence and marked by the reporter Commission's Exhibits Nos. 106-A, B, C and D.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 106-A, 106-B, 106-C, and 106-D" were received in evidence.)

By Mr. Haslett:

Q. Mr. Blitch, I now hand you Commission's Exhibit 106-D, and call your particular attention to the figures that appear in the first column under the heading "Tampa", and ask you to state whether or not those figures represent the purchases of the Economy Wholesale Grocery Company branch at Tampa, Florida?

A. Yes, sir.

Q. Now, I will refer you to the next column headed "Miami", and ask you to state whether or not the figures that appear under that column are the purchases of Morton's round package and free running salt of the Miami branch of the Economy Wholesale Grocery Company?

1080 A. Yes, sir.

Q. Now, I will refer you to the column headed "Orlando," and ask you to state what the figures that appear on Commission's exhibit No. 106-D represent in that particular column?

A. The Economy Wholesale Grocery Company warehouse at Orlando.

Q. Now, I will refer you to the column headed "Jacksonville," and ask you to state whether or not the figures that appear under the column headed "Jacksonville" represent the combined purchases of the Winn & Lovett Grocery Company and the Hagin-Peters Company here in Jacksonville, Florida?

A. Yes, sir.

Q. Does your company receive any other discount or allowance from the Morton Salt Company, other than the 10-cents per case allowance that you have just testified to?

A. No, sir.

Q. The salt that is purchased by your company for the Economy Wholesale Grocery Company and its various branches, is shipped direct to such branches by the Morton Salt Company, is that true, sir?

A. Yes, sir.

Q. And the billing is made to you for that, sir?

A. Yes, sir.

Q. Now, in connection with the sale of salt to the
1081 Hagin-Peters Company, when the shipment arrives in Jacksonville, do they send their own trucks to the destination of the shipment and haul it to their particular warehouse?

A. Yes, sir.

Q. That is not hauled by the Winn & Lovett Company?

A. No, sir.

Q. Does the Winn & Lovett Company operate any wholesale outlets?

A. No, sir.

Q. It is strictly in the retail business?

A. Yes, sir.

Q. I believe you stated that in your Jacksonville stores, you are selling Morton's round package salt at 7½-cents a package?

A. Yes, sir.

Q. Does your company consider the price at which its competitors sell Morton's salt to the consumers important?

A. Yes.

Q. Would your business be in any way affected by the fact that one of your competitors was offering to sell Morton's round package free running salt to the consumer at 6-cents a package, while at the same time you were selling it at 7½-cents a package?

A. The question was, would it affect our business?

Q. Yes.

1082 A. Yes, sir.

Mr. Haslett: I think that is all. Your witness, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Mr. Blitch, do you know of anybody in the Jacksonville area, any retailer, who is selling Morton's blue package salt for 6-cents?

A. No, sir.

Q. Do you know anybody in the Jacksonville area who is selling it any cheaper than your price of two for fifteen?

A. No, sir.

Q. How long has that price of two for 15-cents been in effect in your stores?

A. In our stores for several years, I think. Two years, at least.

Q. So that actually you have never had any occasion to determine whether or not your business would be affected by a 6-cent price per package on Morton's blue can, is that right?

A. Not to my exact knowledge, no, sir.

Q. As a matter of fact, Mr. Blitch, if somebody were to offer the blue can for 6-cents as a one day special in some portion of the cities in which your stores do not operate, that would have no particular effect on your business,

1083 would it?

A. No, sir.

Q. What is the nature of your super-markets? Are they self-service cash and carry stores?

A. That is right.

Q. No delivery and no credit?

A. That is right.

Q. The customer waits on himself?

A. That is right.

Q. And with respect to your regular markets, there you have clerical help for the trade?

A. We have some of those that are self-service, but we have clerical help, and more clerical help in them than we do in the supers.

Q. And the difference in the type of service in the two types of stores would account, to a substantial degree, for the differences of the prices of commodities in one store than in another, is that right?

A. Yes, the type of service and the different volume of business through the stores.

Q. I think you stated, Mr. Blitch, that you received a discount of 10-cents a case on Morton's blue package?

A. Yes, sir.

Q. What is that discount based on, if you know?

A. A 5,000 case purchase.

1084 Q. In a 12 months consecutive period?

A. Yes, sir.

Q. So that you have to purchase 5,000 cases or more in order to obtain that discount?

A. Yes, sir.

Q. Now, in the Jacksonville territory, does your company, Winn & Lovett, operate a warehouse for the purpose of servicing its stores?

A. Yes, sir.

Q. What is the address of that warehouse?

A. 1357 West Beaver.

Q. What is the address of the Economy Wholesale Grocery Company warehouse in Jacksonville?

A. That is located at the same address, 1357 Beaver.

Q. So that the warehouses are one and the same, is that correct?

A. We rent the Economy a certain amount of warehouse space, about 5,000 square feet. It is fenced off, and we have no connection with their merchandise.

Q. But they are in the same building?

A. Yes.

Q. Now, on Morton's blue package, where is that carried in the warehouse, in the Winn & Lovett section or in the Economy section?

A. It is carried in the Winn & Lovett section.

1085 Q. And the requirements of the Economy Wholesale Grocery Company, so far as Morton's blue package is concerned, here in Jacksonville, are furnished out of the Winn & Lovett inventory of blue cans, is that correct?

A. Yes, sir.

Q. And Economy Wholesale Grocery Company carries no separate inventory of the blue can here in Jacksonville in its own rented portion of the warehouse?

A. So far as I know, they do not.

Q. What is the name of the president of the Winn & Lovett Company?

A. A. D. Davis.

Q. A. D. Davis?

A. Yes, sir.

Q. And the vice-president of the company?

A. H. L. Avery.

Q. And the secretary?

A. Kavanaugh, Ernest Kavanaugh, I forget his other initial.

Q. And the treasurer?

A. He is secretary and treasurer.

Q. Mr. Kavanaugh is?

A. Yes.

Q. What are the names of the officers of the Econ-
1086 omy Wholesale Grocery Company?

A. I can tell you the president of the Economy, that is Mr. J. Ellsworth Davis.

Q. And he is the one whom you identified as the brother of the Davis who is president of your company?

A. Yes, sir.

Q. And the vice-president of the Economy?

A. I believe it is M. Austin Davis, I can't be positive.

Q. Is he still a third brother of your Mr. Davis?

A. That is right.

Q. And the secretary of the Economy Wholesale?

A. Tine Davis.

Q. And the treasurer?

A. I believe Mr. J. Ellsworth is president and treasurer. I will have to qualify that by saying that I can't be positive as to those identifications of officers.

Q. So near as you can recall, that is correct?

A. Yes, that is right.

Q. Now, what are the names of the directors of the Winn & Lovett Company, so nearly as you can recall?

A. I think I can remember most of them. Mr. W. R. Lovett and the four Davis Brothers, and Mr. Childress, I believe, Francis Childress.

Q. When you say the four Davis brothers, whom do you mean?

A. Mr. A. D. Davis.

1087 Q. Who is president of your company?

A. Yes, and the other three brothers that are connected with the Economy.

Q. They are on the board of directors of the Winn & Lovett Company?

A. Yes, sir.

Mr. Haslett: Mr. Examiner, may I have an objection to this line of testimony? I think it is irrelevant and immaterial. The case of the blood relationship between the various members of both companies is beyond the scope of the direct examination. Certainly, it is not license for the payment of discounts, and allowances, based on a human relationship.

Mr. McBride: Mr. Examiner, I should like to state this briefly on the record: Counsel, in his last sentence, very succinctly put his finger on my reason for this line of inquiry, and he is attempting to pass judgment in his own

mind as to what is and what is not a license for the quantity discount.

I take it that is soley within the prerogative of the Federal Trade Commission in this case, and that we are concerned now with getting at the connection, against my reasons for his use of the word "legal," and then the Commission can determine in due course whether that connection or relationship will suffice to warrant it.

1088 Trial Examiner Purcell: This is a fact-finding inquiry, and all we want are the facts.

Mr. Haslett: It is a fact-finding body, but it is not an investigating inquiry.

Trial Examiner Purcell: Objection is overruled. Off the record a minute.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

By Mr. McBride:

Q. Now, had you named all of the members of the board of directors of the Winn & Lovett Company?

A. Mr. Marks may be on that board of directors.

Q. What are his initials, if you recall?

A. I think, S. R.

Q. So that would make five directors in all, or maybe I had lost my connection there?

A. No, let's see, it would make six or seven, I am not positive about Mr. Childress and Mr. Marks. Mr. Lovett is chairman of the board, and the four Davis brothers and Mr. Childress and Mr. Marks, I think, make up the board of directors.

Q. Now, will you name the members of the board of directors of the Economy Wholesale Grocery Company, if you know?

A. I am unable to do that, I don't know their directors.

Q. You don't even know the number of directors

1089 that they have?

A. No, sir, I do not.

Q. Does the Winn & Lovett Company own any stock in the Economy Wholesale Grocery Company, if you know?

Mr. Haslett: I object to that.

Trial Examiner Purcell: What is the relevancy of that, Mr. McBride?

Mr. McBride: There are things known as subsidiaries, and the subsidiary angle is developed entirely by stock holdings by parent companies or affiliates.

Trial Examiner Purcell: You should know that.

Mr. McBride: That is correct, and again I am grasping at the thing that counsel was asking, what connection, and let the Commission draw its own conclusions. I believe I am entitled to show that interlocking stock holding, if there is any, if this witness knows.

Mr. Haslett: Mr. Examiner, counsel thinks he is entitled to go into the interlocking stock holding connections between the various members of both firms under question, but the Examiner can readily see that it is beyond any scope of the direct examination. I asked nothing about the stock ownership or the directorates between the two companies.

Trial Examiner Purcell: That is true, Mr. Haslett, and I will agree with you that as far as possible we should
1090 enforce the American rule, rather than the English rule, but where the enforcement of the American rule is strictly one of injustice, I think in an inquiry of this sort, we may let the cross-examination go outside of the direct examination when the facts have been brought out during the course of cross-examination.

I hardly agree with you that in the majority of cases we should stick to the American rule, because otherwise if we go too far afield, there is no telling where we might end up.

Mr. Haslett: The Examiner is reversing his previous ruling where I had objected to the same question in New Orleans, and the Examiner sustained my objection.

Trial Examiner Purcell: That is true. This is the second time today you have said that I have been inconsistent in my rulings. The truth of the matter was, that in the New Orleans investigation there was nothing brought out in regard to interlocking directorates, nor interlocking officers, and in the absence of that, I refused counsel permission to go into the question of similar stockholders or interlocking stockholders. Now, we have the situation where we have an interlocking directorate. I think there is quite a difference.

Mr. Haslett: I think there is quite a difference when the Examiner lets him go into the question of inter-
1091 locking directorates and bring it out, but this question would have never come up if my objection had been sustained in the first place. The Examiner has allowed them to go into the interlocking directorates of these particular companies, and the question is not that, it is beyond

the scope of the examination entirely. Now, there must be some end to this, or this thing is going on ad infinitum forever. I feel, no matter how many times I state that the Examiner is inconsistent in his rulings, that is a perfect right of my own which I stand upon to state my position upon the record, and I have always stated it upon the record, and I don't intend to be cut off at this time.

Trial Examiner Purcell: I am not trying to cut you off, sir, that is another unjust statement you are making.

Mr. Haslett: I am not trying to be unjust, Mr. Examiner, and please don't use the word "unjust."

Trial Examiner Purcell: You are being that way without trying, which is even worse.

Mr. Haslett: I have never tried to be unjust in any way to the Examiner or to the respondent, but I must give counsel for the respondent due notice that if subsidiaries are opened up with this witness, that I shall take the liberty to open it up in other matters.

Trial Examiner Purcell: All right, now, may we
1092 go off the record, with your permission?

Mr. Haslett: That is quite all right with me.

Trial Examiner Purcell: Now, off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

Mr. McBride: Will you read the last question again, Mr. Reporter?

(The question referred to was read by the reporter.)

Mr. Haslett: Before he answers that, I will take the witness on voir dire.

By Mr. Haslett:

Q. Mr. Blitch, are you an officer of the Winn & Lovett Company?

A. No, sir.

Q. Are you a director of the company?

A. No, sir.

Q. Have you access to the minutes of the company?

A. No, sir.

Q. Do you attend any of the directorate meetings?

A. No, sir.

Q. Do you feel that you are in a position to testify as to who the stockholders are of either company?

Mr. McBride: I object to that question, as to how the witness feels—well, I will withdraw my objection.

The Witness: If you mean by that question who
1093 all of them are, no.

By Mr. Haslett:

Q. Have you seen the stock books of either company?
A. No, sir.
Mr. Haslett: That is all.
Mr. McBride: Now, if you will read my last question back, Mr. Reporter, please.
(The question referred to was read by the reporter.)
The Witness: I do not know.
Mr. McBride: I think that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Blitch, is Mr. Davis, who is the head of your company, in any way related in a blood relation with Mr. Hagin?
A. No, sir.
Q. With Mr. Peters?
A. No, sir.
Q. Is there any connection between the officers of the Hagin-Peters Company and the Winn & Lovett Company?
A. So far as I know, none.
Q. Is there any interlocking directorates?
A. No, sir.
Q. They are separate corporations and have nothing to do with each other?
1094 A. Yes, sir.
Q. Do you know of any stock owned by any officer of the Winn Lovett Company, of the Hagin-Peters stock?
A. I do not know.
Q. Do you know the price at which the Economy Wholesale Grocery Company is now selling its round package free running salt?
A. No, sir.
Q. Do you know any prices of the Economy Wholesale Grocery Company?
A. No, sir, only in a general way, no specific prices.
Q. Do they sell cash and carry?
A. Yes.
Q. Who is the manager of the Economy Wholesale Grocery Company here?
A. Mr. Petit.

Q. Who did you say was the president of the Economy Grocery Company?

A. Mr. J. E. Davis.

Q. He is down in Miami, Florida?

A. Yes.

Q. Is he an officer of the Winn Lovett Company?

A. No, sir.

Q. And who is president of the Winn & Lovett Company?

A. A. D. Davis.

1095 Q. And is he an officer of the Economy Wholesale Grocery Company?

A. I do not know. I don't think so, but I am not positive.

Mr. Haslett: I think that is all, thank you very much.

Mr. McBride: Mr. Examiner, excuse me, I omitted one question that has nothing to do with the last line of questioning, and then I shall be through.

Recross Examination by Mr. McBride.

Q. I believe you stated, Mr. Blitch, that on occasions Hagin-Peters would pick up blue cans direct from the pool car?

A. From our car.

Q. From your car?

A. Yes.

Q. And that would be pursuant to your instructions or orders with respect to their own pick-up, is that correct?

A. Yes, sir.

Mr. McBride: That is all, Mr. Examiner.

Mr. Haslett: That is all, sir, thank you very much.

(Witness excused.)

Mr. Haslett: Mr. Kramer.

1096 HENRY KRAMER was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Kramer?

A. Henry Kramer.

Q. And where do you reside, sir?

A. 1252 Belmont Terrace, Jacksonville.
Q. And in what business are you engaged?
A. The food business.
Q. And with what company are you connected?
A. Setzer's Stores & Warehouse.
Q. And where is the Setzer's Stores & Warehouse located?
A. The stores are located in the city of Jacksonville, and the warehouse is at 2301 Liberty Street, Jacksonville.
Q. And what is the business of the Sezter Stores?
A. Setzer Stores has retail food outlets in the city of Jacksonville.
Q. Retail food stores?
A. Yes, sir.
Q. Does it sell any at wholesale?
A. Yes.
Q. And is it a corporation?
1097 A. No, sir.
Q. It is a privately owned firm?
A. Privately owned, yes.
Q. Have you anything to do with the ownership of it?
A. No, sir, it is a sole ownership.
Q. Who owns the company?
A. Ben Sezter.
Q. And how many stores are operated, retail stores are operated?
A. Thirteen.
Q. Thirteen?
A. Yes.
Q. All of them within the city of Jacksonville?
A. Yes.
Q. Do you sell any products within the state of Georgia?
A. Yes, sir.
Q. At wholesale?
A. Yes, sir.
Q. Has your company any competitors?
A. Yes, sir.
Q. Would you name some of your competitors in the retail field?
A. We have A&P, Daylight, Winn & Lovett, and all independent concerns.
Q. And there are a number of independently
1098 owned retail stores?
A. Yes, sir.

Q. Now, in the wholesale end, please?
A. Wholesale, do you want specific names?
Q. Yes.
A. Well, Daylight Grocery Company, Economy, Hagin Peters, mainly.
Q. And they operate in practically the same territory that you operate in?
A. In a way, yes.
Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it purchase any of its requirements from the Morton Salt Company?
A. Yes, sir.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. Well, we have handled their round package, their flat package, and some of their sack salt.
Q. What price is paid by your company for the round package salt?
A. $1.50.
Q. Is that the blue label free running and iodized salt?
A. Yes, sir.
Q. And what do you resell it for at wholesale to your retailer customers?
A. $1.55.
Q. $1.55 per case?
A. Per case.
Q. Do you operate on a cash and carry basis?
A. Cash and carry basis.
Q. Do you have any trucks at all?
A. We do have trucks, yes.
Q. Is the price higher when you deliver the product?
A. Yes, sir.
Q. What is the price when you deliver it?
A. We add a delivery charge.
Q. And how much is that?
A. It ranges from one per cent to three per cent, according to the distance that it is hauled.
Q. On the cash and carry basis of $1.55 a case?
A. Yes, sir.
Q. Does your company receive any discounts or allowances from the Morton Salt Company?
A. No, sir.
Q. Does it purchase on a carload basis?

A. We have purchased carloads, yes.
Q. Did you get any discount on that basis?
A. No, sir.
Q. Do you know approximately how many cases
1100 of Morton's free running salt you purchase per year?
A. Any specific year?
Q. Say, 1941.
A. Between 3500 and 4000 cases, maybe more.
Q. Between 3500 and 4000 cases?
A. Yes, sir.
Q. And would that figure be the same for 1940?
A. 1940, I think, was a little smaller. Our general volume has increased, but we have gone over to a different type of business.
Q. In 1939, was it a little smaller than 1940?
A. I think it ranged about the same, sir. There may have been a little variation, but it would be a slight variation.
Q. You say, in 1941 you might have purchased more than 4000 cases?
A. I am not positive, but I am pretty positive it is over 3500.
Q. Does the Morton Salt Company salesman call upon you to solicit orders for its products?
A. Yes, sir.
Q. And does the broker call upon you, also, sir?
A. Most of the time, yes.
Q. Both of them call on you?
A. Yes.
Q. Do they come together?
1101 A. Yes.
Q. And you give your orders to either the broker or the salesman, as a result of which these are shipped to you by the Morton Salt Company?
A. As far as I know, it is. When they come in together, I just give them an order, and whoever happens to write it up takes the order.
Q. I see. Does the Morton Salt Company do any promotional or missionary work in connection with the resale of its salt through retailer stores?
A. Well, they have access to our stores. That is, they can go in, and if they want to, they can put the salt in the shelf, and they do that once in a while.

Q. Do they use any display posters or window posters for the display of Morton's round package salt?

A. That is something I couldn't tell you, sir.

Q. You say you do not receive any discount from the Morton Salt Company?

A. No, sir.

Q. Do you purchase direct from the Morton Salt Company?

A. We are billed from the Morton Salt Company, yes.

Q. Have you some of those invoices with you, sir?

A. Yes, but I will have to step out and get them, sir.

Trial Examiner Purcell: We will take a five minute recess.

1102 (A short recess was taken.)

Trial Examiner Purcell: Recess is over. Proceed.

Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's exhibit No. 52, except as to the quantity of the product, dates, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company nad Setzer Stores, Jacksonville, Florida, who is a customer of the respondent, Morton Salt Company, and that said Commission's exhibit No. 52 is typical of such invoices for the sale of salt of the same type as that appearing thereon that pass between the respondent herein and its customer, Setzer Stores of Jacksonville, Florida, and that such invoices have in the regular course of the respondent's business passed between the respondent and its said customer, Setzer Stores of Jacksonville, Florida, since the respondent began the sale of, and the said company, Setzer Stores of Jacksonville, Florida, began the purchase of the type of products as appear on Commission's exhibit No. 52.

Mr. McBride: It is so stipulated.

Trial Examiner Purcell: Off the record a minute.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

1103 By Mr. Haslett:

Q. Does the fact that some of your competitors receive a 15-cent discount per case on Morton's blue package free running and iodized salt, while at the same time you receive no discount from the Morton Salt Company upon your purchases, in any way affect your business?

Mr. McBride: Mr. Examiner, the usual objection.

Trial Examiner Purcell: Objection overruled. He may answer.

The Witness: Indirectly, yes.

By Mr. Haslett:

Q. And what do you mean by indirectly, sir?

A. Well, if a competitor buys salt cheaper than I do, and he is selling it at $1.50 or $1.55, in order for me to obtain my business, I meet that price. I mean, I would lose business, but I may lose operating expenses or a legitimate profit.

Q. Would your business be affected if one of your competitiors offered for sale and sold Morton's round package salt at $1.53 a case, while at the same time you were selling it at $1.55 a case?

A. If I was selling it at $1.55, yes.

Q. And that is the price you are selling it for?

A. Yes, sir.

Q. Now, what effect would it have upon your retailer business, where you are selling direct to the consumer, 1104 if one of your competitors is purchasing direct from the Morton Salt Company and getting a 15-cent per case allowance from the Morton Salt Company, while at the same time on your purchases you are receiving no allowance from the Morton Salt Company?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Same ruling. He may answer.

The Witness: Well, it would indirectly work a hardship.

By Mr. Haslett:

Q. I believe you stated that A&P was one of your competitors?

A. Yes, sir.

Q. As the buyer for Setzer's Stores, is it your duty to place orders with the Morton Salt Company and other firms for your various requirements of products resold by your retailer stores to the consumer, and resold by your wholesale outlets to the retailers?

A. Yes, sir.

Q. I believe you stated it is a solely owned firm?

A. Yes, sir.

Q. Do you handle any other type of salt, or do you purchase any other type of salt from the Morton Salt Company, other than the round package salt?

1105 A. I have, sir.

Q. And I believe you stated you purchased on a carload basis in some instance?

A. The round package?

Q. And other products than round package.

A. Yes.

Q. Did you receive a discount on the carload basis?

A. I couldn't answer that intelligently. At one time they were giving a certain amount of points off for carload basis, which I think, was more or less general. That was the market at the time, and it would show on the invoice.

Q. Is that in effect at the present time?

A. No, sir, I haven't bought but very little salt from Morton Salt Company except that round package salt, and some ice cream salt.

Q. Would your business be in any way affected by the fact that one of your competitors was receiving approximately a five per cent discount over and above the carload price on its purchases from Morton Salt Company, while at the same time you were not receiving any percentage discount?

A. Indirectly, yes.

Mr. McBride: I object to that, Mr. Examiner, my usual objection. There is nothing in the record about a five per cent discount, unless counsel wants to put that in terms of an abstract question.

1106 Mr. Haslett: I said approximately five per cent.

Trial Examiner Purcell: Do you mean over and above the carload discount?

Mr. Haslett: That is right.

Trial Examiner Purcell: Do you want to change the word "price" to "discount"?

Mr. Haslett: That is right.

Mr. McBride: I will maintain my usual objection to it, Mr. Examiner.

Trial Examiner Purcell: My usual ruling. He may answer.

The Witness: Indirectly, yes.

By Mr. Haslett:

Q. It would be adversely affected?

A. Yes.

Q. Does Morton Salt Company offer any promotional activity or missionary work to your company in connection with the resale of its products to the consuming public?

A. The wholesale or retail?
Q. Retail.
A. Well, in some vague instances, yes, their salesman may come in our store once in a while and try to push his salt.
Q. Would that be sporadic?
A. Yes.
Q. And not a general policy?
1107 A. No, sir.
Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. Mr. Kramer, I believe you stated that your wholesale price to the general retail trade was $1.55 a case on the blue can?
A. $1.55 f. o. b. warehouse, yes.
Q. Cash and carry basis?
A. Cash and carry.
Q. And approximately how long has that price been in effect, do you recall?
A. No, sir, I don't, but I expect it has been in effect the last three years, anyway, sir.
Q. For a considerable length of time?
A. Yes.
Q. And what is the price of Morton's blue can per package in your retail store outlets of your company?
A. Well, we have different prices, sir, ranging from 7½ cents to three for a quarter.
Q. Seven and a half cents to three for a quarter?
A. Yes, sir.
Q. Approximately how long has that been in effect?
A. For the last three years.
Q. Does any wholesaler on a cash and carry basis
1108 in Jacksonville offer Morton's blue can at $1.53 a case, to your knowledge?
A. I don't know, sir.
Q. I am sorry, I didn't hear you.
A. I said, I do not know.
Q. Do you know whether any wholesaler on the cash and carry or on any other basis located in Jacksonville, offers Morton's blue can at less than $1.55 per case?
A. No, sir.

Q. Do you know whether that has ever been true in the past five or six years?

A. I recall some deals that we made on Morton's salt, but as to the actual price, I can't remember now, sir.

Q. Those would be in the nature of specials, however?

A. Well, special prices on that particular package of salt, yes.

Q. I take it that your company makes specials itself from time to time, is that correct?

A. Yes, we do.

Mr. McBride: I think that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. What is a special? We have heard quite a bit of reference to it here. I would like to know what it is.

A. Well, in our case—I couldn't say what my com-
1109 petitor's special was—but in my case, if I wanted to run an item at a certain figure to attract a customer or to push a certain item, I would put a price with a very small margin of profit, or no margin of profit at all on it.

Q. And that is to be used as an attraction for the sale of other products?

A. In a way, it would, yes.

Q. To get the people into the stores?

A. Well, I am not talking of the retail, I am talking of the wholesale.

Q. Oh, I see, you mean they have them in the wholesale, as well as the retail end?

A. Yes.

Q. What do they do when they put a special order in the retail store?

A. Well, it serves the same purpose.

Q. Well, if one of your competitors was offering a can of Morton's salt as a special in one of their retail stores at 6-cents a package, just for a day or a week, say, for a week, would that affect your business in any way?

A. Yes, if we wouldn't be able to meet that price.

Q. It would affect your business, it doesn't matter how long it ran?

A. It would affect our business for a while, yes.

Q. Did you know that you could purchase Morton's
1110 round package free running salt from one of your

competitors at a cheaper price than you could purchase it from the Morton Salt Company?

Mr. McBride: If the Examiner please, I object to that question. There is nothing in the record that indicates that he can or can't. I don't know what the propriety of the question is or what basis of fact it has.

Mr. Haslett: There is testimony in the record that competitors have purchased from other competitors at a cheaper price than they could purchase direct from the Morton Salt Company, and I am asking this witness if he knew that he could do that.

Trial Examiner Purcell: Let's go off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. I will sustain the objection on the ground there is nothing in the record to justify the question.

By Mr. Haslett:

Q. Do you encounter the competition of the Timberlake Grocery Company in any areas served by your warehouse?

A. Well, our operation is a little different from Timberlake, or some other wholesaler. We sell in that territory, but the customer comes and picks it up in his own truck in a cash and carry way.

Q. I see. You don't haul to that territory?

1111 A. No, sir.

Q. But your products are sold to customers in that territory?

A. Yes, sir.

Q. If you could purchase Morton's salt from one of your competitors at a cheaper price than you pay directly from the Morton Salt Company, would you do it, sir?

Mr. McBride: I object to that question, Mr. Examiner.

Trial Examiner Purcell: On what grounds do you object to that question?

Mr. McBride: Well, on second thought, I guess I won't. I will withdraw my objection.

Trial Examiner Purcell: Very well. You may answer.

The Witness: Yes, I would.

Mr. Haslett: I think that is all.

Recross Examination by Mr. McBride.

Q. One final question, Mr. Kramer. To your knowledge, does any retailer in Jacksonville at the present, or at any time during the past several years, has such a retailer sold Morton's blue can at 6-cents a package to the consuming trade?

A. I can't answer that, but they have sold it for less than 7½-cents.

1112 Q. By way of these retail specials that you referred to?

A. Well, I don't know if you would call it a special or not. It was on for a certain length of time, yes.

Q. And who sold it on that basis?

A. A competitive chain.

Q. What was the name of that chain?

A. Winn & Lovett Grocery Company.

Q. How about Daylight?

A. I couldn't tell you, sir, I don't recall any.

Q. How much business did you lose as a result of that?

A. I have no way of telling.

Q. But you may not have lost any, as far as you know?

A. I lost some salt business, yes.

Q. You are certain you lost some salt business as a result of that?

A. If their price was cheaper than ours, yes.

Q. You are just assuming that you lost some salt business, isn't that correct?

A. Well, I am assuming it, yes.

Q. But you don't know whether your volume went down one case, three cases or remained the same, during the time that price was on, do you?

Mr. Haslett: I object to that, Mr. Examiner. It is obvious that this witness hasn't the books and records in front of him to determine whether he lost one case, two
1113 cases or three cases. He said he lost business, that any differential in price made him lose business.

Trial Examiner Purcell: I think that counsel may inquire as to what business was actually lost, if the witness knows. If he doesn't know, and can't state, let him say so. It is certainly not subject to an objection anyway.

Mr. McBride: Would you read my last question, Mr. Reporter, please?

(The question referred to was read by the reporter.)

By Mr. McBride:

Q. Can you answer that question, please?

A. No, sir, I can't tell you.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. But you do know, Mr. Kramer, that if a competitor of yours was offering it at less than the price that you were selling it for, that your business would be affected?

A. Well, if he was selling all of his groceries cheaper than mine, my business would be affected. I think if he was selling a certain particular package cheaper than mine, that I would be affected.

Mr. Haslett: I think that is all, Mr. Kramer, thank you very much for coming, sir.

(Witness excused.)

1114 Mr. McBride: I will make my usual request, Mr. Examiner, for the withdrawal of Commission's exhibits numbers 100 to 106-D, inclusive, for the purpose of photostating, the originals thereafter to be returned to the record.

Trial Examiner Purcell: Granted.

1115 Library, Federal Building,
Macon, Georgia,
Monday, May 11, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 Michigan Avenue, Chicago, Illinois, for the respondent.

1116 Mr. Haslett: I would like for the record to show, Mr. Examiner, that Mr. M. I. Simmons, of 315 Poplar Street, Macon, Georgia, was subpoenaed as a witness in support of the Commission's case, and has appeared and been excused.

I will call as my first witness Mr. Timberlake.

J. E. TIMBERLAKE, JR., was thereupon called as
1117 a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. You are Mr. J. E. Timberlake, Jr.?
A. Yes, sir.
Q. And where do you reside, Mr. Timberlake?
A. Macon, Georgia.
Q. And in what business are you engaged, sir?
A. The wholesale grocery business.
Q. And how long have you been in the wholesale grocery business?
A. Seven years.
Q. What company are you connected with?
A. Timberlake Grocery Company.
Q. And where is that located, sir?
A. In Thomasville, Georgia and Macon, Georgia.

Q. It has two warehouses or two wholesaling houses, one located in Thomasville and one in Macon, Georgia?
A. That is correct.
Q. Where is the main office of the company located?
A. There is no main office.
Q. There is no main office?
A. No.
Q. Each branch operates separately and makes its
1118 own purchases?
A. Yes.
Q. What territory is covered by the Macon branch of the Timberlake Grocery Company?
A. About a 65 mile radius.
Q. A 65 mile radius around Macon?
A. Around Macon.
Q. What is the business of the Timberlake Grocery Company?
A. Strictly wholesale groceries.
Q. Wholesale groceries and allied products to the retailer customers, that is, retail stores?
A. Retail stores, hotels, cafes and drug stores.
Q. You sell only at wholesale?
A. Only at wholesale.
Q. Has it any retail stores associated with it?
A. None at all.
Q. Is it a corporation?
A. Yes, sir.
Q. Incorporated under the laws of what state, sir?
A. Georgia.
Q. And who is the president of the company?
A. J. E. Timberlake.
Q. And who is the vice-president?
A. We have several of them.
Q. You have several of them?
1119 A. Yes, sir.
Q. Are you one of them?
A. Yes, sir.
Q. And have you a vice-president in charge of the Thomasville, Georgia branch?
A. Yes.
Q. What is his name?
A. J. H. Guy.
Q. J. H. Guy?

A. No, excuse me. Mr. Guy is secretary-treasurer. The vice-president down there is T. H. Timberlake.

Q. T. H. Timberlake?

A. Yes, sir.

Q. And you say Mr. Guy is secretary-treasurer?

A. Yes.

Q. Does Mr. Guy have actual charge of the business there in Thomasville?

A. He does.

Q. Now, has your company any competitors?

A. Oh, yes.

Q. Would you name some of your competitors in the Macon area?

A. C. D. Kenny Company, H. V. Kell, operating out of Griffin and Fort Valley. Do you want some more?

Q. Yes, you have more than two competitors, don't you?

1120 A. Oh, yes. Glover Grocery Company in Americus, Whitfield Grocery Company in Milledgeville, and Griffin Grocery Company in Griffin.

Q. Have you some other competitors here in Macon?

A. Operating a slightly different type of business, yes, cash and carry wholesale houses.

Q. Name some of those, sir.

A. Modern Grocery Company, City Grocery Company, W. R. Word & Company.

Q. Does your company purchase and handle salt at all?

A. Yes, sir.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes.

Q. It also makes purchases from other companies?

A. Yes.

Q. What type of salt does the Timberlake Grocery Company purchase from the Morton Salt Company?

A. The round package Morton salt.

Q. Is that the blue label free running?

A. Yes, free running.

Q. And also iodized salt?

A. Yes.

Q. Do you know the price at which your company pays the Morton Salt Company for its round package blue label free running and iodized salt per case?

1121 A. Yes, sir.

Q. What is that price, just the price it pays for it?
A. The price we pay for it?
Q. Yes.
A. $1.50 a case.
Q. And has that price been in effect for a long time?
A. Quite some time, yes.
Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company?
A. Yes.
Q. What type of discount does your company receive?
A. We receive a quantity discount from the Morton Salt Company.
Q. And what quantity is it necessary for your company to purchase in order to be eligible for the discount which you receive?
A. I am not familiar with the quantity.
Q. You are not familiar with that?
A. No.
Q. But you do receive the quantity discount?
A. Yes.
Q. But you don't know what the quantity is?
A. No.
Q. Approximately how many cases of round package free running and iodized salt does the Timberlake
1122 Grocery Company at the Macon branch purchase per year?
A. You asked me to have that information, and you had some of my invoices, and I couldn't check it clearly, and made no effort to. I would say from 700 to 1000 cases a year. Before they go into the record, you might ask the Morton Salt man if I am substantially correct in that estimate.
Q. Well, I will develop that later. You purchase approximately from 700 to 1000 cases a year?
A. Yes, sir.
Q. That is the Macon branch of the Timberlake Grocery Company?
A. Yes.
Q. How are orders placed by your company with the Morton Salt Company?
A. Direct to the Morton salesman.
Q. Direct to the Morton salesman?
A. Yes, sir.
Q. And does he call at your place of business and solicit orders for such salt?

A. Yes, sir.
Q. And as a result of such solicitation, you place orders with the Morton Salt Company?
A. That is correct.
Q. And as a result of which, commodities are shipped to you by the Morton Salt Company?
1123 A. Correct.
Q. And are they shipped to you in a railroad car?
A. Yes.
Q. And are they put on your siding?
A. No, they are shipped in pool cars.
Q. Pool cars?
A. Yes, sir.
Q. And what do you mean by pool cars?
A. The Morton salt man will get up enough weight from various wholesalers or direct accounts in this territory, and ship the entire 45,000 pound car to one distributor to be broken up among the purchasers.
Q. Who is the distributor that receives the shipment from the Morton Salt Company in this territory?
A. I believe it is the M&M Distributing Company.
Q. Are they competitors of yours?
A. No.
Q. They just distribute products for the Morton Salt Company?
A. And other manufacturers.
Q. Morton Salt Company is a customer of M&M Distributing Company, then, if you know, sir?
A. Repeat that question.
Q. Is Morton Salt Company a customer of the M&M Distributing Company?
1124 A. I don't understand the question.
Q. What is the business of the M&M Distributing Company, if you know, sir?
A. To distribute pool cars.
Q. And it distributes pool cars for all types of commodities, not only salt?
A. Yes.
Q. And it has as its customers various processors of foods and allied products?
A. Yes.
Q. And it has a warehouse, does it, sir?
A. Yes.
Q. And it warehouses the products and then distributes them to the various customers of the processors?

A. Yes, sir.

Q. And Morton Salt Company would be a customer of the M&M Distributing Company, if you know?

A. Yes, sir.

Q. What is the resale price that you charge for the round package blue label free running and iodized salt per case to your customers?

A. It varies from $1.70 to $1.60.

Q. Why would it vary, sir?

A. Competition.

Q. Does competition have something to do with it?

1125 A. Yes.

Q. You say it would vary from $1.60 to $1.70?

A. Yes, sir.

Q. Why would you sell it at $1.60?

A. We buy and sell. If we can make a profit on an item, we sell it. If it is short, we take the short profit.

Q. And what causes you to take short profits?

A. Competition.

Q. And when you say competition, what do you mean?

A. Prices being quoted by other wholesale distributors.

Q. And do you meet that price?

A. Generally.

Q. Why do you meet it?

A. To stay in business.

Q. If you didn't meet that price, you would lose the business?

A. In all probability, yes.

Q. Has your company ever purchased salt from the Morton Salt Company on a carload basis?

A. In Macon?

Q. Yes

A. No, sir.

Q. Always in a pool car?

A. Yes.

Q. Does your company receive any other discounts
1126 other than the 10-cents per case discount from the Morton Salt Company on its purchases from the Morton Salt Company?

A. No, sir.

Q. Does it receive any discount on Kleer salt, if your company purchases it?

A. We have never purchased Kleer salt from them.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Yes.

Q. And the price which it pays for any of its products is an important factor, is it not, sir?

A. Yes, sir.

Q. Is the price at which your competitor sells its salt given consideration by your company in determining the price your company sells its salt products for?

A. We make our own prices, regardless of competition, and if we are out of line, we fix our prices accordingly.

Q. And you fix your price in accordance with what your competitors are selling the products at?

A. That is true.

Q. Do you compete with the Thomas & Howard Company in any territory served from the Macon branch of the Timberlake Grocery Company?

A. Yes, sir.

Q. In what area do you compete with Thomas & Howard?

1127 A. McRae.

Q. Is that in Georgia?

A. Yes, sir, and Wrightsville, and Eastman. I believe those are the only three points.

Q. And where is the Thomas & Howard Company located that services those various points?

A. Vidalia.

Q. Vidalia, Georgia?

A. Yes, sir.

Q. I believe you stated that your company does receive a discount on its purchases of round package free running salt from the Morton Salt Company?

A. Yes, sir.

Q. How is that received, sir, every three months, six months or every year?

A. I believe it is semi-annually; I could not be for certain on that.

Q. And it comes to you in the form of a check from the Morton Salt Company?

A. Yes.

Q. What does your company do with the money when it receives it from the Morton Salt Company?

A. It is entered as a credit to merchandise.

Q. As a credit to merchandise?

A. Yes.

1128 Q. A credit to salt merchandise?

A. Yes.

Q. And the round package salt merchandise?

A. No, it is broken down like that at all. When it is received, it is just credited to merchandise.

Q. What is it used for, sir? What is the money used for?

Mr. McBride: If the Examiner please, I will object to that. I don't think it is within the scope of this hearing to find out how Timberlake Grocery Company uses its money.

Mr. Haslett: I am not asking that question, what Timberlake uses its money for. I am asking what it uses the money it receives from the Morton Salt Company for. I think the question is very relevant to the issues in the case.

Trial Examiner Purcell: I will let him answer.

The Witness: It is used in the same manner as other receipts, to pay for any merchandise, to pay for any bills, or to buy more merchandise.

By Mr. Haslett:

Q. Your company is a separate and distinct corporation, isn't it, sir?

A. Yes, sir.

Q. Not connected in any way with any other corporation or company?

A. No, we are connected in another way with some 1129 other company.

Q. What other company are you connected with, sir?

A. Thomas & Howard Company.

Q. And what legal or corporate connection is there between your company and Thomas & Howard Company?

Mr. McBride: If the Examiner please, I object to the word "legal".

Trial Examiner Purcell: Objection sustained.

By Mr. Haslett:

Q. What corporate connection is there between your company and the Thomas & Howard Company?

A. We have the same common stockholders in our company as are in Thomas & Howard Company, some of them.

Q. All of them?

A. All of the major stockholders of the Timberlake Grocery Company are stockholders in the Thomas & Howard Company.

Q. Would you name some of those stockholders, sir?

A. Myself.
Q. You own stock in Thomas & Howard Company?
A. Yes.
Q. Now, aren't there a number of Thomas & Howard Companies?
A. Yes.
Q. Which one do you own stock in?
A. Charleston.
Q. Charleston?
1130 A. Yes, and Chester.
Q. And Chester, what state is that in?
A. South Carolina.
Q. They are separate corporations, each one of them are?
A. Yes, sir.
Q. Any others?
A. When I say Charleston, Charleston takes in Allendale and Vidalia.
Q. Vidalia, Georgia?
A. Yes, sir.
Q. And Allendale, what state is that in?
A. South Carolina.
Q. Is any other company operating under the name of Thomas & Howard in which you hold some stock?
A. No.
Q. Do you have some stock in the Timberlake Grocery Company?
A. Yes.
Q. What is your official position with that company, sir?
A. Vice-president.
Q. Are you the major stockholder of that company?
A. No.
Q. Other than the interlocking stock ownership of the two companies, is there any other corporate connection between the two, not receding from my position that there is no corporate connection, whether the stock ownership
1131 is interlocking or not; I will predicate my question upon that position.
Mr. McBride: Mr. Examiner, I don't understand that last statement.
Trial Examiner Purcell: Read the last statement, Mr. Reporter.
(The statement referred to was read by the reporter.)
Mr. McBride: I will just object to that, because I don't know how the witness can answer it intelligently in light of

that statement. I take it, Mr. Haslett can preserve his position in such formal manner as he wants, but not in the form of a statement involving a question to the witness.

Trial Examiner Purcell: I think the objection of counsel is well taken.

Mr. Haslett: Mr. Examiner, the word "other" carries with it a conclusion that there has been some corporate connection between the two by the joint ownership of stock. I am basing my position that that is not a corporate connection between the two companies, and asking him whether there is any other corporate connection between the two companies other that the joint ownership of stock. I think the question is well put and is legally put.

Trial Examiner Purcell: Mr. Haslett, you may ask the witness a question, but do not make any reservation
1132 as to your position embodied in the question. I think it is improper to do so. Your question is reserved as a matter of record, anyhow, and has nothing to do with this witness, and I take it unless you can overcome it, you will be bound, more or less, by what he says. Just let's confine ourselves to questions of fact without your statement to the witness, with which he is not concerned.

Mr. Haslett: I think the Examiner has missed the point of the question entirely. The significance of the question carries with it a conclusion of law upon which I was not basing or predicating my subsequent question upon. Now, I will be glad to reframe the question.

By Mr. Haslett:

Q. Mr. Timberlake, other than the interlocking stock ownership between your company and the various other corporations operating under the name of Thomas & Howard, is there any other corporate connection between the two companies?

A. All of the directors of our corporation, the board of directors, are financially interested in Thomas & Howard Company.

Mr. Haslett: I move that both answers to the questions that I propounded, as to what the corporate connection between the two companies is, be stricken from the record, based upon the position that the interlocking stock ownership of the two companies and the interlocking direc-
1133 tors of the two companies is not a corporate connection between the two companies.

Mr. McBride: If the Examiner please, I don't believe there is any basis for Mr. Haslett's motion. This is a fact-finding hearing, and it remains for the Commission in due course to determine whether there is or is not a corporate connection, and if so, what significance it has in this case. I take it that it is not appropriate at this time for counsel for the Commission to endeavor to shape the course of the hearing by his own theories of corporate connections.

Mr. Haslett: I am sure that counsel doesn't mean that there is any basis for the conclusion that because of interlocking stock ownership and interlocking directorates, that there is any such thing as a corporate connection between the two where such things exist. My position is clear, that there is no corporate connection between this company and any of the corporations operating under the name of Thomas & Howard Company; that this is a separate corporation and is in no manner connected with the various corporations operating under the name of Thomas & Howard.

Mr. McBride: I would like to make one more statement that will sum up my views, Mr. Examiner. I don't propose to argue or assert my theories as to whether a corporate connection has or has not been proved at
1134 this juncture. In due course, if that becomes a matter of importance or issue, I shall assert it in a formal manner before the Commission. I only cite that in response to counsel's questions here, the witness has made certain statements of fact and this is not the time at this juncture to attempt to revamp his record by the offhand theories of counsel for the Commission as to what is or isn't a corporate connection.

Trial Examiner Purcell: I think I have heretofore ruled on the same question, or a very similar one, with regards to interlocking officers and directors and stockholders. I am going to sustain the objection, Mr. Haslett.

Mr. Haslett: Note an exception to the Examiner's ruling.

Mr. McBride: Mr. Examiner, by way of formality of the ruling, I think Mr. Haslett made it in the form of a motion to strike the answers. Would the ruling be sustaining the objection or to deny to the motion, just as a matter of clarity on the record?

Trial Examiner Purcell: That is correct, I sustain the objection and deny the motion.

Mr. McBride: Thank you.

Trial Examiner Purcell: That makes it clear from both angles.

Mr. McBride: That is correct.

1135 By Mr. Haslett:

Q. In order that the record may be clear and that you will have an opportunity to tell your whole story, Mr. Timberlake, what is an interlocking directorship between the Thomas & Howard Company and various corporations operating under the trade name of Thomas & Howard Company?

Mr. McBride: Now, if the Examiner please, I will object to the form of that question. Counsel says "various corporations operating under the trade name of Thomas & Howard". There is no evidence of that in the record, that there are several corporations operating under the trade name of Thomas & Howard.

Mr. Haslett: I beg to differ with counsel. He has answered that Thomas & Howard operates under separate corporations, and they are not one corporation.

Trial Examiner Purcell: Let us have the question reread.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Strike the word "trade" and let the question read: "Under the name of", instead of "trade name of".

Mr. Haslett: I agree to that correction.

Mr. McBride: I will withdraw my objection.

1136 By Mr. Haslett:

Q. All right, Mr. Timberlake, if you can answer that.

A. The president of the Timberlake Grocery Company is vice-president of the Thomas & Howard Company. One of the vice-presidents of Timberlake Grocery Company is president of the Thomas & Howard Company.

Q. And will you name those gentlemen, please, in their proper order?

A. J. E. Timberlake is vice-president of the Thomas & Howard Company, and E. E. Boyce is president of the company.

Q. He is president of the Thomas & Howard Company?

A. He is.
Q. Which Thomas & Howard Company?
A. All of them, the Thomas & Howard Company.
Q. You are sure about that, sir?
A. Yes.
Q. Do you know who the president of the Thomas & Howard Company of Columbia, South Carolina is?
A. Mrs. Thomas is president in name, and Mr. Boyce is acting president as being Mrs. Thomas' son-in-law.
Q. But Mr. Boyce isn't president of that company, is he?
A. Well, he is president of the organization, Thomas & Howard Company. Breaking them down into individual units, I probably couldn't go through them.
Q. Do you know who the president of Thomas &
1137 Howard Company of Chester, South Carolina is?
A. No.
Q. Is Mr. Boyce the president of that company, sir, if you know?
A. He is the president of the Thomas & Howard Company, group.
Q. Do you know who the president of the Thomas & Howard Company at Charleston, South Carolina is, in which you own stock?
A. No, sir.
Q. So, Mr. Boyce isn't the president of all of the Thomas & Howard corporations, is he?
A. No.
Q. Is the round package free funning and iodized salt the only type of salt that you purchase from the Morton Salt Company?
A. Yes, I believe it is.
Q. Does your company do any promotional work in connection with the sale of Morton's round package blue label free running and iodized salt?
A. Yes.
Q. Is that done at the instance of the Morton Salt Company?
A. No.
Q. It is done on your own initiative?
A. Yes.
1138 Q. You are not paid by the Morton Salt Company for such promotional or missionary work?
A. No, sir.

Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's Exhibit No. 52, except as to the quantity of the product, the date, number of the invoice, consignee and designation, have passed between the respondent, Morton Salt Company, and Timberlake Grocery Company in Macon, Georgia, who is a customer of the respondent salt company, and that said Commission's Exhibit No. 52 is typical of such invoices for the sale of salt of the same type that appears thereon, that pass between the respondent herein and its customer, Timberlake Grocery Company of Macon, Georgia, and that such invoices have, in the regular course of the respondent's business, passed between the respondent and its said customer, Timberlake Grocery Company of Macon, Georgia, since the respondent began the sale of, and the said customer, Timberlake Grocery Company of Macon, Georgia, began the purchase of the type of products as appears on Commission's Exhibit No. 52.

Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. I believe you mentioned, Mr. Timberlake, that 1139 you have purchased approximately from 700 to 1,000 cases of Morton's free running and iodized salt per year. Has that been consistent during the past several years? Is that the average amount that you purchased during the past several years?

A. I think so.

Mr. Haslett: I think that is all. I will turn you over for cross-examination to Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Mr. Timberlake, when did your company first open its Macon branch, do you recall approximately the date?

A. January 1, 1939.

Q. 1939?

A. Yes, sir.

Q. You testified, I believe, that your resale price to retailers ranged from $1.60 to $1.70 per case, of the blue can?

A. Yes.

Q. Have those prices, or that range of prices been in effect for approximately the entire time that your company has had a house here in Macon?

A. Yes, sir.

Q. I think you stated, Mr. Timberlake, that you received a discount from the Morton Salt Company on purchases by your company here in Macon of cases of Morton's 1140 blue package salt, is that right?

A. Yes, sir.

Q. In what form is that discount paid to you, do you recall?

A. No, sir, I don't, I am not positive on it.

Q. Well, do you know whether it is paid to you from the Morton Salt Company or is it paid to you by or through the Thomas & Howard Company?

A. I am not sure. I would have to check the books at the store, and I could tell you.

Q. Do you recall ever having seen a check from the Morton Salt Company payable to your company that purported to be for a quantity discount?

A. I don't recall, Mr. McBride.

Q. Do you recall of ever having seen a credit memorandum from the Morton Salt Company to the Timberlake Grocery Company which purported to be for a quantity discount to your company?

A. No, sir, I have never seen it.

Q. So, it would be possible, so far as your knowledge is concerned, Mr. Timberlake, that any discount you may receive, and by "you", I mean the Timberlake Grocery Company in Macon, for blue can purchases from the Morton Salt Company, may be paid to or through the Thomas & Howard Company?

A. Yes.

Q. Now, you referred to the M&M Distributing 1141 Company here in Macon as being the company which distributes Morton Salt, which you purchase and participate in pool car deliveries. That company is not a wholesaling house, is it?

A. No, sir.

Q. It isn't a jobber?

A. No, sir.

Q. I believe you stated that they had a warehouse which they used in some instances for certain producers' products in the course of distribution for those producers?

A. Yes, sir.

Q. You don't know of your own knowledge whether or not M&M Distributing Company uses their warehouse facilities for Morton Salt Company's stock, do you?

A. No, sir.

Q. In other words, it would be possible, so far as you know, that M&M Distributing Company is employed by the Morton Salt Company simply to check out the pool cars as the various participants call for their salt, is that right?

A. Yes.

Q. Now, Mr. Timberlake, I am a wee bit interested in this corporate connection that we have been talking about on your direct examination. Can you tell me whether or not there is what you would describe as a principal Thomas & Howard Company?

A. I don't understand your question.

1142 Q. Let me put it this way: Is there one Thomas & Howard Company which owns or controls in one manner or another the operations of the other Thomas & Howard companies? You mentioned, I believe, there were several Thomas & Howard companies.

A. I think if you will check back, you will find that Mr. Haslett mentioned there were several Thomas & Howard companies originally. I would say no, in answer to your question, there is no one company that controls the rest of them.

Q. Well, these various Thomas & Howard companies, is each one a corporation?

A. Most of them are. Several of them have branches that are not incorporated separately.

Q. But in each case, the branches would be owned by some one of the Thomas & Howard corporations?

A. That is correct.

Q. Is there one Thomas & Howard corporation which owns and controls portions of stock in the other Thomas & Howard companies?

Mr. Haslett: I object to that. The question has been asked and answered.

Mr. McBride: I am trying to get back around my word "principal," which I admit might have been confusing to the witness. That would be the sole purpose of this question, Mr. Examiner.

1143 Trial Examiner Purcell: Let the witness answer.

The Witness: Will you repeat that question?

Mr. McBride: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I don't know.

By Mr. McBride:

Q. Now, when you referred to Mr. Boyce, I believe, as being president of the Thomas & Howard organization,—

A. Yes, sir.

Q. —what did you mean by president of Thomas & Howard organization? Will you explain that for me, please?

A. I think he was elected president of the whole Thomas & Howard group, the Thomas & Howard Company as a whole. That is the way I was speaking of it, and I think that is correct.

Mr. Haslett: Unless the witness can testify as to his actual knowledge of what took place, whether Mr. Boyce was president of the entire group, I think that the answer should be stricken from the record as not responsive.

Mr. McBride: If the Examiner please, if counsel will recall the question, I simply asked the witness to explain what he meant by referring to Mr. Boyce as president of the Thomas & Howard organization. That is all my question was directed to, and he has given his explanation of what he meant.

Mr. Haslett: He didn't testify Mr. Boyce was
1144 president on direct examination. He testified he didn't know whether he was president of the various companies when I interrogated him as to the various corporations.

Trial Examiner Purcell: Yes, he corrected his statement as to that, as to some of them, when he was asked in detail by Mr. Haslett, and then later as to others he said he didn't know. I will sustain the objection.

By Mr. McBride:

Q. Mr. Boyce, whom you referred to as the president of the Thomas & Howard organization, is president of at least some of the Thomas & Howard corporations, so far as you know, is that correct?

A. Yes, sir.

Mr. Haslett: I will have to take this witness on voir dire to test his qualifications.

Mr. McBride: If the Examiner please, I think I will object to that at this time. Normally, he has that privilege

as a matter of right, but counsel for the Commission has taken it upon himself to explore the entire corporate—using the word in the vague form—ramifications of these companies, and I don't know by what token of right he can now take it and test this witness' qualifications on my cross-examination. It is perfectly acceptable to counsel on direct examination.

Mr. Haslett: When I asked him on direct exam-
1145 ination, I was asking him as to the relationship between his company and the Thomas & Howard Company, not as to the relationship between his company and all of the corporate connections that may exist or may not exist between his company and the Thomas & Howard Company. The witness has now gone beyond that field and has begun to testify as to the corporate set-up of all of the various corporations of the Thomas & Howard Company. Counsel will have an opportunity at a further date to find out about this from the various officers of the Thomas & Howard Company, and should not be permitted to explore into the unknown knowledge of this witness as to Mr. Boyce's connection with the Thomas & Howard organization.

Trial Examiner Purcell: It is a question, of course, of whether this witness has knowledge. I realize that you have the right to take the witness on voir dire. If you insist upon it, I will give you that right, or rather, I will accede to that, but it would seem to me that the question of counsel is certainly within the scope of the direct examination and of his cross which he is now pursuing. You were the one who opened up the gate, you must have considered that the witness was qualified when you had him on direct, and I think really that Mr. McBride is well within his rights. However, I will have to be guided by your prerogative of taking the witness on voir dire. Do you
1146 insist upon it?

Mr. Haslett: No, Mr. Examiner, I won't insist upon it.

Trial Examiner Purcell: Very well, then, your objection is overruled.

Proceed, Mr. McBride.

Mr. McBride: Mr. Reporter, will you read the last question, please?

Mr. Haslett: I will say this, Mr. Examiner, I won't insist upon it at this time, but if the examination of this witness continues along this line, I will have to insist upon it.

Trial Examiner Purcell: Of course, the answer to that is this: You still have your right of redirect examination, and the further he opens up the scope by cross, the further you have the right to inquire, it is axiomatic.

By Mr. McBride:

Q. Mr. Boyce holds what position in the Timberlake Grocery Company?

A. Vice-president.

Q. And the president of the Timberlake Grocery Company is whom?

A. J. E. Timberlake.

Q. And he is the vice-president of at least some of the Thomas & Howard corporations, is that correct?

1147 A. Yes.

Q. You hold what position with the Timberlake Grocery Company?

A. Vice-president.

Q. And do you hold any officership in any of the Thomas & Howard Companies?

A. None.

Q. Could you name the rest of the officers of the Timberlake Grocery Company, referring now both to your Macon and your Thomasville branch?

A. President, J. E. Timberlake of Columbia; vice-president, E. E. Boyce of Gastonia; W. D. Flintom of Charlotte, vice-president; J. E. Timberlake, Jr., vice-president; T. H. Limberlake, vice-president; and secretary-treasurer, J. H. Guy.

Q. Now, will you name the members of the board of directors, please, of the Timberlake Grocery Company?

Trial Examiner Purcell: Let me ask at this point, did the preceding question refer to the Timberlake Grocery Company of Macon, or both places?

The Witness: The Timberlake Grocery Company of Macon is a branch of the Timberlake Grocery Company of Thomasville.

Mr. McBride: I directed the question, Mr. Examiner, on the assumption that both branches were part and

1148 parcel of one corporation, namely, the Timberlake Grocery Company.

The Witness: That is right.

Mr. McBride: And I mentioned the two branches because one of the vice-presidents and some of the officers, I understood, were at Thomasville.

Trial Examiner Purcell: Let's take a five minute recess here.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over.

By Mr. McBride:

Q. I will renew my questions, Mr. Witness, after you have had a chance to rest a minute.

A. All right, I have named over the officers of the Timberlake Grocery Company. The board of directors are comprised of those officers, Mrs. J. E. Timberlake, L. F. Timberlake, Mrs. W. D. Flintom, O. H. Hogan, and Harold Jones, I think they comprise the Board of Directors.

Q. I think you stated, Mr. Timberlake, that Mr. Flintom was a vice-president of the Timberlake Grocery Company?

A. Mr. Flintom, yes.

Q. I see. Do you know whether or not he is an officer of any one of the Thomas & Howard corporations?

A. I am sure he is, but just what officer, I don't know, so I can't answer definitely.

1149 Q. But you are sure that he does hold certain offices in some of the Thomas & Howard Corporation, is that correct?

A. Yes, but what office, I can't tell you.

Q. Do you know whether or not he is a director of any of the Thomas & Howard corporations?

A. I would like to answer that in the same manner, I am sure he is, but just what director, I couldn't tell you.

Q. And Mr. T. H. Timberlake, I believe you stated, was a vice-president of the Timberlake Grocery Company?

A. Yes, sir.

Q. Do you know whether or not he is an officer of any of the Thomas & Howard corporations?

A. He is not.

Q. Do you know whether he is a director of any of the Thomas & Howard corporations?

A. I don't know.

Q. He may or may not be, so far as your knowledge is concerned?

A. That is correct.

Q. And Mr. Guy, I believe you testified, was secretary-treasurer of your company?

A. Yes.

Q. Does he hold any office in any of the Thomas & Howard corporations?

A. No, sir.

1150 Q. Is he a director of any of those Thomas & Howard corporations?

A. No, sir.

Q. Mrs. J. E. Timberlake, you say, is a director of your company. Is she also a director of any of the Thomas & Howard corporations?

A. Yes, sir.

Q. Do you know which one?

A. No, sir.

Q. L. F. Timberlake, am I correct, is also a director of your company?

A. Yes, sir.

Q. And is he a director of any of the Thomas & Howard corporations?

A. Yes, sir.

Q. Do you know which ones?

A. Chester, I am reasonably sure.

Q. Chester?

A. Thomas & Howard Company of Chester, South Carolina.

Q. Mrs. W. D. Flintom, is she a director of any of the Thomas & Howard corporations?

A. I think you just asked that question first, and I answered it.

Trial Examiner Purcell: Answer it again, please.

By Mr. McBride:

1151 Q. I asked about Mrs. Flintom.

A. Oh, Mrs. excuse me, I thought you said Mister, I don't know.

Q. And O. H. Hogan, one of your directors, is he also a director of some of the Thomas & Howard corporations?

A. No, sir.

Q. How about Harold Jones, he is one of your directors?

A. Yes, sir.

Q. And is he a director of any of the Thomas & Howard corporations?

A. No, sir.

Q. Now, does the Timberlake Grocery Company, as such, hold any stock in any of the Thomas & Howard corporations?

A. No, sir.

Q. I believe you stated that you, as one of the officers and directors of Timberlake Grocery Company, owned stock in certain of the Thomas & Howard corporations?

A. Yes, sir.

Trial Examiner Purcell: I don't recall that he testified that he as an officer held stock, he in his individual capacity, not in his dual capacity or representative capacity held stock. Am I correct, sir?

Mr. McBride: I will accept that amendment to my question.

By Mr. McBride:

1152 Q. That you personally own stock in certain of the Thomas & Howard corporations?

A. Yes, sir.

Q. And I believe you named those corporations, didn't you?

A. Yes, sir.

Q. Mr. Boyce, does he own stock in any of the Thomas & Howard corporations?

A. Yes.

Q. Can you name the ones in which he holds stock?

A. No, sir.

Q. Mr. Flintom, does he own stock in any of the Thomas & Howard corporations?

A. Yes, sir.

Q. Can you name the ones with respect to which he holds stock?

A. No, sir.

Q. Mr. T. H. Timberlake, the same question with respect to him?

A. He owns stock in the Thomas & Howard Company of Chester and Charleston.

Q. And Mr. Guy, the same question, as to whether or not he holds stock in any of the Thomas & Howard corporations?

A. I don't know.

Q. He may or may not, so far as your knowledge is concerned?

A. He may or may not.

1153 Q. Mrs. J. E. Timberlake, the same question?

A. Mrs. J. E. Timberlake?

Q. Yes does she hold stock in any of the Thomas & Howard corporations?

A. Yes, sir.

Q. In which corporation, if you know?

A. I don't know.

Q. And Mr. L. F. Timberlake, the same question?

A. Yes.

Q. Do you know what corporations?

A. No, sir. Chester is one of them, I am sure, but if there is any other, I don't know.

Q. Mrs. W. D. Flintom, does she hold stock in any of the Thomas & Howard corporations, if you know?

A. I don't know.

Q. And the same thing with respect to Mr. O. H. Hogan?

A. He does not.

Q. And the same question with respect to Mr. Jones?

A. He does not.

Q. You stated that you owned stock in certain of the Thomas & Howard corporations, which you specified. Would that be a substantial or controlling interest?

A. No, sir.

Q. As a stockholder, however, would you be familiar with the corporate organization of those corporations
1154 and of the other Thomas & Howard corporations?

A. No, sir.

Q. Will you state, Mr. Timberlake, having in mind that I am not interested in the number of shares, particularly, but will you state the principal stockholders of the Timberlake Grocery Company, will you name them, please?

A. J. E. Timberlake, E. E. Boyce, W. D. Flintom, J. E. Timberlake, Jr., J. H. Guy, T. H. Timberlake—do you want them all?

Q. Would the stockholders whom you have named have more than a 50 per cent control between them in the aggregate?

A. Yes, sir.

Q. No, then, I shan't need any more. Is it the policy of the Timberlake Grocery Company, Mr. Timberlake, to buy in conjunction with Thomas & Howard companies?

A. Yes, sir.

Q. That is true of a number of lines of commodities, is that correct?

A. Yes, sir.

Q. When the Timberlake Grocery Company was first organized, was it organized as an expansion unit of the Thomas & Howard Corporations?

A. No, sir.

Mr. Haslett: I object to that.

Trial Examiner Purcell: What is the purport of
1155 the question, Mr. McBride?

Mr. McBride: I am endeavoring to get the background of these two corporations, that is all, Mr. Examiner.

Trial Examiner Purcell: I don't think we need to go into that.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Timberlake, will you state, if you know, sir, just the manner and form in which the discount is received by your company upon its purchases of Morton's round package free running and iodized salt?

A. If I can use a telephone to call my bookkeeper, I can tell you exactly how that is received.

Mr. Haslett: I think we might take a recess, can't we, Mr. Examiner, to have him obtain that information and clear the record?

Trial Examiner Purcell: Granted. I think it should be cleared up.

Mr. Haslett: You can get that information, whether it comes from Thomas & Howard in the form of a check or whether it comes in the form of a check or credit memorandum direct from the Morton Salt Company?

The Witness: Yes, sir.

(A short recess was taken.)

1156 Trial Examiner Purcell: Recess is over.

By Mr. Haslett:

Q. Mr. Timberlake, have you had an opportunity now to determine what manner is employed by either the Morton Salt Company or the Thomas & Howard Company in transmitting the check which represents the discount upon your purchases of Morton's round package free running and iodized salt?

A. Yes, sir.

Q. And what is the form in which that discount is received, sir?

A. It is received in the form of a check from the Thomas & Howard Company.

Q. And it is not a check on the blank form of the Morton Salt Company?

A. No, sir.

Q. Do you haul your salt from the M&M Distributing Company's warehouse to your warehouse?

A. Yes, either from their warehouse or the car that they are breaking. M&M calls us up, and we go to their warehouse and get it.

Q. You go there in your own trucks?

A. Yes, sir.

Q. Does the Morton Salt Company compensate you in any way for the hauling of the products from the siding where the car is situated to your warehouse?

1157 A. No, sir.

Q. How do you know that the various officers of the company operating under the name of Thomas & Howard own stock in other corporations operating under the name of Thomas & Howard?

A. Will you read that question back, please?

(The question referred to was read by the reporter.)

By Mr. Haslett:

Q. Is that clear, sir?

A. You mean, various officers in the Timberlake Grocery Company, how do I know, now, that they own stock in the Thomas & Howard Company?

Q. No, you testified that Mr. E. E. Boyce owned stock in the Thomas & Howard Company, was an officer of both the Timberlake Grocery Company and one of the Thomas & Howard corporations, you didn't know which corporation?

A. Yes.

Q. How do you know that he owns stock in other corporations operating under the name of Thomas & Howard? Can you answer that, Mr. Timberlake?

A. No, I can't answer definitely.

Q. Do you of your own knowledge know whether Mr. Boyce owns stock in other corporations operating under the name of Thomas & Howard, other than the ones in which he is an officer?

1158 A. No, I don't know that.

Q. You testified that Mr. Flintom owned stock in your corporation?

A. Yes, sir.

Q. And that he owns stock in other corporations operating under the name of Thomas & Howard. How do you know he owns stock in other corporations?

A. I have never seen it in writing or print, but I—
Q. You have been told that by someone?
A. I have been told that, I have heard it talked.
Q. But you have never seen the actual stock, have you?
A. No, sir.
Q. Have you seen the stock books of the various Thomas & Howard corporations?
A. No, sir.
Q. You don't actually know of your own knowledge who are the stockholders in any of these corporations, do you, sir?
A. No, sir.
Q. That would be true as to all of the various officers and directors of the Timberlake Grocery Company that you named?
A. No, sir, it wouldn't be true of all of them.
Q. Except yourself, you know that you own stock?
A. There are a few of us that I know of. I have seen their stock and know that they are.
1159 Q. Would you name those, sir?
A. T. H. Timberlake, I have seen his stock.
Q. What relation is Mr. T. H. Timberlake to you?
A. My brother.
Q. He is a brother?
A. Yes.
Q. And you are the son of J. E. Timberlake, Sr.?
A. That is correct.
Q. And your brother is also the son of Mr. Timberlake?
A. Yes, sir.
Q. And you know that he owns stock in some of the Thomas & Howard corporations?
A. Yes, and then I know that J. E. Timberlake, Sr., owns stock in Thomas & Howard Company.
Q. Have you seen the stock books of those companies?
A. No.
Q. But you know from conversations with your father that he does own stock in Thomas & Howard?
A. Yes.
Q. Is that true about Mr. Guy?
A. No, sir, I have never seen his.
Q. How about Mrs. Flintom, you don't know of your own knowledge whether she owns stock in any other corporation?
A. No, sir, I think I answered that, that I didn't know.

Q. How long have you been vice-president of the
1160 Timberlake Grocery Company at Macon?

A. Now, the Timberlake Grocery Company of Macon is a branch of the Timberlake Grocery Company of Thomasville.

Q. I believe you stated, Mr. Timberlake, that there was no principal office of the company?

A. There is not, we are acting as separate units, but we are one corporation only, incorporated under the laws of Georgia.

Q. Well, how long have you been vice-president of the Timberlake Grocery Company?

A. Since 1935.

Q. Is Mr. E. E. Boyce a vice-president, too?

A. Yes, sir.

Q. And your father is the president of the company?

A. Yes.

Q. Do you know whether or not all stockholders of the Thomas & Howard Corporation get allowances or discounts on their purchases?

A. No, sir.

Mr. McBride: Excuse me, Mr. Examiner, I would like to have that question re-read.

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

Mr. McBride: I object to that question.

1161 Mr. Haslett: I am asking him if he knows.

Trial Examiner Purcell: You may answer if you know. Do not state what the facts are.

Mr. Haslett: I think he has answered.

Trial Examiner Purcell: What was the answer? I didn't hear it.

The Witness: No, sir.

Mr. McBride: Of course, if the Examiner please, I am objecting to the inference in this record that stockholders receive some sort of a discount. The purpose of my objection is, I don't want that inference from that question in this record, that the stockholders, as such, receive discounts in any way involved in this case. I would like to have that reconsidered in connection with my objection to the question.

Trial Examiner Purcell: I don't think that this inference can hurt you, Mr. McBride, if there are no facts to back it up.

Mr. McBride: Well, there is literally nothing in the record about discounts, or anything else.

Trial Examiner Purcell: I will agree with you on that, but the question is in the record. Let it stand.

Mr. McBride: All right.

By Mr. Haslett:

Q. Each one of the officers of the Timerlake Gro-
1162 cery Company is a stockholder in one of the corporations of Thomas & Howard, if you know, sir?

A. I am not sure about Mr. Guy. I know his wife has stock, but I am not sure about him.

Q. Is he the only exception?

A. He is the only one that I am not sure about.

Q. And the Timberlake Grocery Company receives a discount upon its purchases of Morton salt?

A. Yes.

Q. Do you know how much stock Mr. J. E. Timberlake, Sr., owns in the Timberlake Grocery Company, of your own knowledge, sir?

A. I have that record in the office; I am not familiar with it right now.

Q. Is it a controlling amount?

A. No, sir.

Q. Do you know how much Mr. Boyce owns, of the Timberlake Grocery Company's stock?

A. I would have to look at my stock records in the office.

Q. Would that be a controlling amount?

A. No, sir.

Q. How about yourself, do you own a controlling interest in the Timberlake Grocery Company?

A. No, sir.

Q. Does Mr. Guy, J. H. Guy, own a controlling
1163 interest in the Timberlake Grocery Company?

A. No, sir.

Q. Does Mr. T. H. Timberlake own a controlling interest in the Timberlake Grocery Company?

A. No, sir.

Q. The Timberlake Grocery Company is not a unit of Thomas & Howard, is it, sir?

A. No, sir.

Q. How long has your company been receiving the 10-cent discount per case on its round package free running and iodized salt purchases?

A. Since 1935.

Q. Since 1935?
A. Yes, sir.
Q. Has it always been 10-cents?
A. Yes, sir.
Mr. Haslett: I think that is all, Mr. Timberlake.
Mr. McBride: I have no further questions.
(Witness excused.)
Trial Examiner Purcell: Call your next witness, please.
Mr. Haslett: I will call Mr. Cohen to the stand next.

HARRY COHEN was thereupon called as a witness
1164 for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Cohen?
A. Harry Cohen.
A. And where do you reside, Mr. Cohen, in Macon, Georgia?
A. Yes.
Q. And in what business are you engaged?
A. Wholesale grocery commodities.
Q. And with what company are you connected?
A. Modern Grocery Company.
Q. And is that a corporation?
A. No, sir.
Q. What is it?
A. It is a partnership.
Q. And you are in partners with whom, sir?
A. My father and my brother.
Q. And is it equally owned by the three of you?
A. No, my father has half interest, I have a fourth and my brother has a fourth.
Q. You have actively engaged in the business yourself?
A. I am manager.
Q. You are the manager of the business?
A. Yes.
1165 Q. And what is the business of the Modern Grocery Company?
A. To deal in wholesale groceries and tobacco, notions and things pertaining to the wholesale grocery field.

Q. Do you sell your products to the retailers?
A. Yes, exclusively.
Q. And where is the Modern Grocery Company located?
A. 1035 Broadway.
Q. Is that in the city of Macon?
A. Yes, sir.
Q. Has it any branches?
A. No, sir.
Q. What is the radius of the territory covered by your company in the sale of its various products?
A. I would say about 35 miles.
Q. Around Macon?
A. Yes, sir.
Q. Does your company have any competitors?
A. Yes, sir.
Q. Would you name some of your competitors, please?
A. We have W. R. Word & Company, Macon, Georgia, with a branch at Dublin; we have Timberlake Grocery Company, we have City Grocery Company, we have C. D. Kenny Company; I think they are our principal competitors.
Q. Do you encounter the competition of Thomas & Howard in any of these areas?

1166 A. No, sir.
Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it make any purchases from the Morton Salt Company?
A. Yes.
Q. It makes purchases from other companies, also?
A. Yes.
Q. That process salt?
A. Yes.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. We buy evaporated salt in bulk bags, we buy one and one-half pound evaporated salt, and we buy block salt for feeding stock, and we buy one and one-half pound packages of iodized and plain Morton's free running salt.
Q. And that is in the blue package?
A. Yes, sir.
Q. Do you know the price which your company pays for its round package blue label free running and iodized salt from the Morton Salt Company?
A. $1.50.

Q. And how are orders placed by your company with the Morton Salt Company for its requirements of salt?

A. We are solicited by their representative.

Q. Does he call at your place of business?

1167 A. Yes.

Q. What is his name, sir?

A. Mr. Roquemore, his first name or initials have slipped my mind.

Q. He calls at your place of business and solicits orders, and you do give him some orders for Morton salt?

A. Yes, sir.

Q. As a result of which, salt is shipped to you from the Morton Salt Company?

A. Yes, sir.

Q. Does your company purchase any salt on a carload basis?

A. Yes, sir.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company?

A. No, sir.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Surely.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price your company sells its salt products at?

A. Surely.

Q. You say you do purchase on a carload basis?

A. Yes, sir.

Q. And you do not receive any discounts or allowances?

1168 A. Other than what is offered me. I will be more specific, on this case salt, 36 one and one-half pound package case salt, they give discounts at times, and we buy it at the lowest price.

Q. What is the brand name for that salt, sir, if you know?

A. There are several brand names. It is the same salt in several names. We buy generally White Crystal.

Q. White Crystal salt?

A. Yes.

Q. And is that in one and one-half pound packages?

A. Yes, sir.

Q. And you do receive a discount on a carload basis when you purchase that type of salt?

A. No, you can buy it in any quantity. The quantity does not determine the price. It is just that if he is offering a discount at the time we purchase salt, we receive it.

Q. It is sporadic, and not general?

A. That is right.

Q. Sometimes he gives you a discount on it, and sometimes he doesn't?

A. They go by units, they have a list price for their package salt, and they will give you one unit off or two units off, or whatever their competition is doing at the time.

Q. You mean, what the competitors of Morton Salt
1169 Company are doing at the time?

A. Yes.

Q. And they meet that particular competition?

A. Yes, it does not pertain, however, at all, to the one and one-half pound blue container of Morton salt, to which I presume you are referring in this case.

Q. Yes. You don't receive any discount on that, do you?

A. No, sir, I never have.

Q. Have you ever requested it?

A. Well, in purchasing products, one always seeks to obtain the best price, however, he has repeatedly said that $1.50 was his only price.

Q. Did you, up until this morning, know that one of your competitors was getting a 10-cent allowance on the round package free running salt?

A. Up until this morning?

Q. Yes.

A. Well, to be absolutely truthful, I would say I heard it a short time ago.

Q. It was when I told you about it, sir?

A. When you told me about it.

Q. And I was the first one to tell you about it?

A. You were the first one who told me about it.

Q. Is C. D. Kenny Company one of your competitors?

A. Yes, sir.

1170 Q. What is the price at which you resell the round package free running and iodized salt to your customers?

A. We have always used that as a leader, more or less, and our maximum price has been $1.60. However, our regular price was $1.58.

Q. $1.58?

A. Yes.

Q. And do you deliver any products?

A. Yes, we have a limited delivery. Our business is, we are not service jobbers in the general sense of the word. We have no salesmen calling on the trade whatsoever, except myself when I contact customers occasionally. Our business is more or less a cash and carry type of business. However, we do have customers who are very valuable to us and who have no facilities in order to transport their goods from the warehouse to their place, and we render them that service, of course, at the same price.

Q. Is that at $1.60 or $1.58 a case?

A. Well, according to the customer. Our price is $1.58. I mean, we have made sales at $1.60, but our prevailing price is $1.58.

Q. Would the sales at $1.60 be sporadic?

A. Very sporadic, but when a person buys a half case, we charge him 80-cents.

Q. And your general price, then, is $1.58 to the retailers?

1171 A. Yes, sir.

Q. And most of your business is on the cash and carry basis?

A. Yes, sir.

Q. Do you have any retail stores associated with your company?

A. No, sir.

Q. Would your business be affected by the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price that you were offering to sell Morton's blue label salt for?

A. Yes, if it is used as an every day practice, not as a special.

Q. And is your business affected by the fact that some of your competitors pay $1.40 for a case of Morton's free running and iodized salt, while at the same time you pay $1.50 for the same type of salt?

Mr. McBride: I object, Mr. Examiner, on the usual grounds.

Trial Examiner Purcell: The usual ruling. He may answer.

By Mr. Haslett:

Q. You may answer, sir.

A. Well, I have found that on that particular item

1172 we were undersold on it, and we lost a customer's entire order because that item was priced to him below our price.

Q. Below the price that you were paying for it?

A. Below the price that we quoted, to make a profit.

Mr. McBride: If the Examiner please, I will have to ask that the answer be stricken as not responsive to the question.

Mr. Haslett: I think the answer is responsive.

Trial Examiner Purcell: On what ground, Mr. McBride? He is testifying to a fact here in response to a perfectly proper question.

Mr. McBride: Counsel asked in terms of purchase price and the witness answered in terms of resale price.

Trial Examiner Purcell: No, he corrected himself. He asked first in regard to purchase price and then as to asking price. Am I correct in that, Mr. Haslett?

Mr. McBride: I am sorry, I misunderstood, if that is true.

Trial Examiner Purcell: Well, all right, please read the question.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Your objection is well taken to the question. The witness, however, has corrected Mr. Haslett, I think, with his answer. Do you take that view Mr. Haslett?

1173 Mr. Haslett: Yes, I think the answer is quite all right.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. Who is the competitor that you lost that business to, sir, if you know?

A. You mean, cite a specific case?

Q. Yes, the case that you just quoted, where you lost the business, due to the fact that a competitor underquoted you?

A. With reference to a specific case, there is one retailer in Macon who phoned me for a price on Morton's salt. Knowing that he was a close buyer, I named him a price of 5-cents a case over our cost, rather than the usual 8-cents, and we lost the business because he said that he could purchase Morton's salt for $1.50.

Q. For $1.50 case?

A. Yes. I was rather surprised. He named the com-

pany from whom he could buy it, and I was rather surprised, because usually this house did not sell goods at cost.

Q. And who was that competitor that he named, sir?

A. C. D. Kenny Company.

Q. And he purchased from C. D. Kenny Company at $1.50?

A. We did not sell him.

Q. I believe you stated, Mr. Cohen, that you did not receive any discount on a carload basis?

1174 A. No.

Q. Would your business be in any way affected by the fact that one of your competitors who was purchasing on a carload basis, the same as you were, received a discount amounting to approximately 5-per cent off the invoice price?

Mr. McBride: I object to that on the usual grounds, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. He may answer.

The Witness: If my competitor used that 5 per cent as a whip, then we would be affected. However, if he received that 5 per cent as extra profit, then we would not be affected.

By Mr. Haslett:

Q. Now, I will ask you the question, whether or not your business would be affected by the fact that in addition to the 5 per cent discount, a discount amounting to approximately 5-cents, that in addition to that discount, that one of your competitors, or one or more of your competitors, was receiving another 5 per cent discount?

Mr. McBride: The usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: That would certainly be reflected in my competitor's cost—I mean, in my competitor's quoted price, and we would have to meet it.

1175 By Mr. Haslett:

Q. And by meeting it, you would lose money?

A. We would lose money or break even.

Q. And if you didn't meet it, what would happen?

A. Most customer's answer to that is: "My penny to me is as good to me as it is to you."

Q. I mean, if you didn't meet the price your competitor was quoting, would you lose the business?

A. Yes.

Q. Does your company do any promotional work in connection with the sale of Morton's round package blue label salt?

A. As an item that is very popular, we select it at various times and feature it in order to draw trade.

Q. And is that the only promotional work that you do?

A. We use it purely as an avenue for customers.

Q. You are not paid by Morton Salt Company to do that?

A. No, sir.

Q. Approximately how many cases of Morton's round package free running salt do you purchase a year, sir?

A. I think I have those figures with me. In 1940 we purchased 125 cases and in 1941, 130 cases. I think my records are accurate, it may be that I am missing an invoice, but our purchases would run approximately 150 cases a year. I went through my files this morning and looked through them, but it might be that an invoice might be mis-filed.

1176 Mr. Haslett: Mr. Reporter, I hand you five documents and ask that they be marked for identification as Commission's exhibit 107-A, B, C, D, and E, respectively.

(The documents referred to were marked "Commission's Exhibit 107-A, 107-B, 107-C, 107-D, and 107-E" for identification.)

By Mr. Haslett:

Q. Mr. Cohen, I asked you a little while back the approximate number of cases of Morton's round package free running salt that you purchased during 1940 and 1941. Have you had an opportunity since that time to recheck your records?

A. Yes, sir.

Q. Do you want to change your testimony at this time?

A. Yes.

Q. How many cases of Morton's round package free running and iodized salt did you purchase during the year 1940?

A. 170 cases.

Q. And for 1941?

A. 225.

Q. Mr. Cohen, I hand you what has been marked for identification as Commission's exhibit 107-A, and ask you

to state what that is, if you know, sir? Is that an invoice from the Morton Salt Company?

A. It is.

Q. Has it a number, sir?

1177 A. 14530.

Q. And who is it directed to?

A. Modern Grocery Company.

Q. Has it a date, sir?

A. November 29, 1940.

Q. And what is the next document, if you will describe that, please, sir, that is, Commission's exhibit 107-B?

A. That is a bill of lading.

Q. From whom?

A. From the Morton Salt Company.

Q. To the Modern Grocery Company?

A. Yes.

Q. Does it have a number?

A. The number is N-1106.

Q. What is the next document, if you know, as represented by Commission's exhibit No. 107-C for identification?

A. A freight bill.

Q. Has that a number, sir?

A. Freight bill No. 358.

Q. And the date?

A. December 3, 1940.

Q. And what is the document marked for identification as Commission's exhibit No. 107-D?

A. A credit memorandum.

Q. From what company?

1178 A. Morton Salt Company.

Q. Has it a number?

A. Yes, 63997.

Q. And under what date?

A. December 4, 1940.

Q. And what is the document as represented by Commission's exhibit for identification 107-E?

A. It is a credit memorandum, or at least—it is an invoice.

Q. An invoice?

A. Yes.

Q. From what company?

A. Modern Grocery Company.

Q. To what company?

A. Morton Salt Company?

Q. Under what date?
A. February 6, 1941.
Q. Has it a number?
A. Yes.
Q. What is it?
A. C-46022.

Mr. Haslett: Mr. Examiner, I offer in evidence Commission's exhibit for identification 107-A, B, C, D, and E.

Mr. McBride: No objection.

1178 Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and so marked by the reporter as Commission's Exhibit No. 107-A, B, C, D, and E.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 107-A, 107-B, 107-C, 107-D, AND 107-E" were received in evidence.)

By Mr. Haslett:

Q. How long has the Modern Grocery Company been in existence?
A. Since December, 1935.
Q. And it has been in continuous operation since that time?
A. Yes.
Q. Selling groceries and allied products to the retailer stores?
A. Yes, sir.
Q. Have you been connected with it since 1935?
A. Yes, sir.
Q. I believe you stated the number of cases you bought in 1940 and 1941. Would you refer to your memorandum again?
A. All right, sir.
Q. How many was it in 1940, sir?
A. 170.
Q. And how many in 1941?
A. 225.

1180 Q. 225?
A. Yes.

Q. And that is Morton's round package free running salt?
A. Yes.
Q. In case purchases?
A. Yes.

Mr. Haslett: I think that is all, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. You just stated, Mr. Cohen, that your company had been in business since 1935, and that in 1940 your blue can purchases by cases was 170, and it was 225 in 1941. Now, did your company show the same sort of general increase in its blue can purchases from 1935 to 1939, so nearly as you can recall? I appreciate that you don't have the figures with you, I just wondered if you could recall that?

A. Well, you see, it might be that in 1936 we might have sold 250, for all I know. I really don't know.

Q. How long has your price of $1.58 a case been in effect, about three or four years?

A. We patterned our business after—

Trial Examiner Purcell: (Interrupting.) The question is, how long has it been in effect.

The Witness: Since 1935.

By Mr. McBride:

1181 Q. Since 1935?

A. Yes, sir.

Q. And I think you stated that you purchased at times carloads of salt from the Morton Salt Company, that is all varieties of salt?

A. Yes.

Q. So far as you know, you have been quoted the carload basis on those purchases?

A. Yes.

Q. And you mentioned, I believe, Mr. Cohen, one instance where a retailer in Macon called you with respect to your sale price of Morton's blue can per case?

A. Yes, sir.

Q. Can you give us the name of that retailer?

A. The Big Apple Super Market.

Q. And what was the date of that call?

A. Some time in February or March, something like that. The reason I remember it so well is because Mr. Haslett was in our place, I imagine some two or three months ago, and it happened either the day before that or at that time; I didn't make a memorandum of it.

Q. You don't know of your own knowledge where that retailer purchased his salt after that telephone conversation, do you?

A. I said I didn't. I said he didn't buy it from me.

1182 Q. That is as much as you knew about the result of the telephone call?

A. That is right.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Is the Big Apple store a unit of a chain of retail grocery stores?

A. No, sir, it is an individual super market, individually owned super market.

Q. Here in Macon?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. Cohen, thank you very much.

1183 Mr. Haslett: I will call as my first witness, Mr. McFeely.

HAROLD ALLEN McFEELY was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Please state your full name for the record, Mr. McFeely.

A. Harold Allen McFeely.

Q. And where do you reside, Mr. McFeely?

A. Overlook Drive, Macon, Georgia.

Q. In what business are you engaged, sir?

A. Wholesale grocery business.

Q. And with what company are you connected?

A. The C. D. Kenny Company, a branch of Baltimore.

Q. How long have you been in the wholesale grocery business?

A. May I ask a question? Do you mean personally, or the company?

Q. No, you personally.

A. Fifteen years.

1184 Q. And how long have you been with C. D. Kenny Company?

A. Twelve years.

Q. And you say you are associated with C. D. Kenny Company at the present time?

A. Yes, sir.

Q. In what capacity?

A. Manager.

Q. Manager of what, sir?

A. Of their branch located at 320 Oglethorpe.

Q. Is that in the city of Macon, Georgia?

A. Yes, sir.

Q. What is the business of the C. D. Kenny Company?

A. Dealing in grocery items and coffee and tea carried by most grocery stores, retail grocery stores.

Q. They sell groceries and allied products to retail grocery stores?

A. Yes, sir.

Q. Do they sell any at retail?

A. No, sir, at wholesale only.

Q. Is the C. D. Kenny Company a corporation, if you know, sir?

A. I just wouldn't know.

Q. What territory is covered by the C. D. Kenny Company's branch at Macon, Georgia, that is, geographically what territory do you sell your products in?

1185 A. A 75 mile radius of Macon.

Q. And do you have any competitors?

A. Yes, sir.

Q. Would you name some of them, please, sir?

A. Timberlake Grocery Company, H. V. Kell Company, Griffin Grocery Company, Modern Grocery Company, Unadilla Grocery Company and Whitfield Grocery Company.

Q. Do you encounter the competition of Thomas & Howard in any area served by your branch?

A. No, sir.

Q. All of the competitors you named are wholesale grocers?

A. Yes, sir.

Q. Does your company in the course of its business handle or sell salt?

A. Yes, sir.

Q. And does it make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. Will you tell us the method and means which are employed by you as branch manager, in placing your

orders for your requirements of Morton's salt from the Morton Salt Company?

A. Mr. Roquemore, their salesman, or Mr. Campbell, their district man, usually makes the contact, and I place my orders direct with either one of the two representatives for carloads and LCL shipments.

1186 Q. Less than carloads?

A. Yes, sir.

Q. And the two gentlemen that you named, are they representatives of Morton Salt Company?

A. To my knowledge, they are.

Q. And they receive orders from you for your requirements of Morton's salt, as a result of which commodities are shipped to you from the Morton Salt Company?

A. Yes.

Q. And you say you purchase on a carload basis, full cars?

A. As a rule, it is carload, yes.

Q. And then you have less than carload shipments?

A. Yes, sir.

Q. Is there any difference between the price of the commodities on a carload basis and the less than carload basis?

A. No, sir.

Q. The same price?

A. The same price, yes.

Q. When you say less than carload, do you mean a pool car?

A. A pool car, yes, sir.

Q. When you purchase on a carload basis, is the car of salt put on your siding?

A. Yes, sir.

Q. And you just truck it into your warehouse?

A. Truck it in from the car, yes.

1187 Q. Now, when you purchase on a less than carload basis or a pool car, where is the car situated?

A. For the past year [redacted] has been at the M&M.

Q. The M&M what?

A. The M&M Distributing Company. Before then, I believe it was just to whichever jobber in the city had the largest quantity of salt.

Q. In the past year, it has been distributed by the M&M Distributing Company?

A. Yes.

Q. Before that time, it was shipped to the one who had the most salt in the car?

A. Yes, in some cases myself.

Q. And in some cases, your competitors?

A. Yes.

Q. Where it was shipped to yourself, you didn't have any hauling at all, did you?

A. That is right.

Q. And where it was shipped to a competitor, you had to haul it from a siding to your place?

A. Yes, sir.

Q. Do you know what the M&M Distributing Company is?

A. It is a branch of the Atlanta organization.

Q. What is their business, if you know?

A. Storage only, and distribution of cars.

1188 Q. They don't sell products in competition with you?

A. No, sir.

Q. Now, when you buy a less than carload lot of salt, and the car is shipped to the M&M Distributing Company, does the Morton Salt Company grant you any allowance for the transportation of the product from the M&M Distributing Company to your warehouse?

A. No, sir.

Q. Before the M&M Distributing Company came into the picture as distributors for the Morton Salt Company, did the Morton Salt Company grant you any cartage allowance from the siding of a competitor where this car was placed, to your warehouse?

A. No, sir.

Q. But where you purchased in less than carload lots and the car was placed on your siding, you had no trucking to do at all with the products, is that correct, sir?

A. Yes, that is correct.

Q. What type of salt does your company purchase from the Morton Salt Company at its Macon branch?

A. We are supposed to have White Crystal for this territory.

Q. Do you handle any free running or Morton's iodized salt?

A. Yes, sir.

Q. That is in the blue package, the round blue package?

A. Yes.

1189 Q. Do you know the price which you pay for that salt per case at the present time?

A. Yes, I do, it is $1.50 less 10-cents quantity discount.

Q. And do you know the price that you pay for the White Crystal?

A. Yes, I have a nickel quantity discount on flats.

Q. You get a quantity discount of 5-cents on the White Crystal salt and 10-cents on the round package salt?

A. Yes.

Q. And what quantity are you required to purchase in order to be eligible for that?

A. There is no limit. My LCL shipments that I referred to, were, as a rule, Morton's round salt, just fill-ins until I am able to take in a full car, but there has never been a differential in the price at all.

Q. The price has always been $1.50 since you can remember?

A. Yes, it has always been $1.50 since I can remember.

Q. Do you know what the price of the flat package is, the White Crystal salt?

A. Yes, it is usually always billed a nickel higher than the competition, and the nickel is given back to us as a quantity discount. I think the price today is 90-cents less 5-cents.

Q. It is usually a nickel higher than competition, you say?

A. What I mean is, in the way of billing. Other
1190 salt companies bill me net price without a quantity discount, but Morton's does show it.

Q. It shows it on its invoices?

A. Yes, that is right. In other words, if I was to buy from a competitor of Morton's, and the salt was to cost me 85-cents bought, they would bill it out at 85-cents, whereas Morton always billed it a nickel higher and then attached a credit memorandum to cover it.

Q. Of 5-cents a case?

A. Yes, sir.

Q. Do you know the reason for that?

A. Well, it is my understanding that you can qualify for certain units of the company as a whole, which entitles you to your nickel, and in some cases a dime, on the rounds.

Q. Do you know what that qualification is, sir?

A. No, sir, I don't.

Q. Do you know what the qualification is on the round package free running salt on which you receive your 10-cent discount per case?

A. I understand it is 50,000 cases a year.

Q. Well, do you purchase 50,000 cases per year?

A. Myself?

Q. Yes.

A. No, sir, the company does.

Q. Do you know that as an actual fact? Have
1191 you ever seen the books and records of the company?

A. No, I don't know it as an actual fact. That is hearsay, it was told to me, I don't know it.

Q. How many cases of Morton's round package plain and iodized salt do you purchase a year?

A. I noticed in 1940 I bought 725 cases, and in 1941 I bought 50 cases. I don't understand it.

Q. So, in 1940 you purchased how many, sir?

A. 725, and in 1941 I bought 50 cases. My copies of invoices have been checked as much as five times in my office, and were checked a few minutes ago again, and we can't find where we have purchased any salt other than on August 26, 1941, and at that time we bought 50 cases of Morton's iodized.

Q. Did you receive a 10-cent allowance on that 50 cases of salt that you purchased in 1941?

A. I don't know whether I did or not.

Q. Did you receive the allowance on the 700 and some odd cases you purchased in 1940?

A. I am supposed to have received it, but the check never comes to me.

Q. It doesn't come to you?

A. No, sir.

Q. Where does it go?

A. It goes to Baltimore.

Q. Do you receive any notation from the Balti-
1192 more office that such a check has been received?

A. Yes, I do, but I never have—I should check to see,—but as a rule there is a slip, a credit memo slip notifying me of a credit to account 142, which is miscellaneous income.

Q. Is that one of your account numbers?

A. Yes, sir.

Q. Account No. 142?

A. That is right, sir.

Q. And the discount received on Morton's round package blue label free running and iodized salt is applied to account 142?

A. Yes, sir.

Q. That is all the purchases made through your branch here in Macon?

A. That is right.

Q. The orders are placed direct by you to the Morton Salt Company?

A. Yes, sir.

Q. How are the bills paid?

A. The bills are paid in Baltimore. I never keep the originals, the only thing I have is copies.

Q. The bills are paid in Baltimore, and the orders are placed direct?

A. The orders are placed directly by myself, that is right.

1193 Q. What is the price that you sell Morton's round package free running salt for per case?

A. My selling price is $1.70. My price is the same thing, but we cut it down where competition forces us, but an average worked out is $1.60.

Q. Well, why do you sell it at $1.60?

A. I find that is competition.

Q. What do you mean by competition?

A. Well, I consider Timberlake as a credit house like myself, and I find $1.60 is necessary, but I find in cash houses it is $1.58 and down to $1.55.

Q. And do you sell it at $1.55 sometimes, and $1.58?

A. I have sold two people at $1.58 and one for $1.55, and that was meeting a price of a cash house at that time.

Q. Well, why did you meet the price?

A. Why did I meet it?

Q. Yes.

A. To hold our business and to gain prestige with the man as meeting competition.

Q. Well, why did you want to hold the business?

A. Why do I want to hold my business?

Q. Yes.

A. Well, that is a kind of hard question to answer there, sir. I wouldn't want to hold it, I want to increase it.

Q. Did you meet the price in order to hold your
1194 business, and if you didn't meet it, you lost the bnsiness?

A. Yes, sir.

Q. Does your company in the Macon branch receive any other discounts or allowances other than the 10 cents per case allowance and the 5-cent allowance on the White Crystal salt?

A. Are you still speaking of salt?

Q. That is right,

A. Yes, there is a discount on 6/10's.

Q. What is 6/10's?

A. That is a 6/10 package of salt.

Q. What do you mean by 6/10's?

A. There—they are 10 pound bags and six to the carton.

Q. What do you receive on 6/10's? Let's clear that up.

A. I don't know exactly, 2 cents per carton, I think. There is a scale on the purchases of salt as to quantity discount, and the balance of the salt happens the same way with us.

Q. And you receive the 2 cents per case allowance on the 6/10's?

A. I am pretty sure that is correct, it is not more than a nickel.

Q. And what was the other you mentioned?

A. 15/4's, ice cream salt.

Q. That is, 15 four pound bags to the package?

1195 A. Yes, it is either ice cream or plain salt, one of the two, but I am pretty sure it is ice cream salt.

Q. What do you get on that particular purchase, what sort of discount?

A. I am not in a position to say exactly. I don't buy enough to be interested in those small few, because I never reflect that in my selling price.

Q. When you purchase on a carload basis, do you receive any discount over and above the carload price?

A. No, sir, I get the same thing if I buy LCL or carload.

Q. I see, in less carload lots and carload lots, it is the same price to you, sir?

A. Yes, sir.

Q. Then, the only discounts that you know of are the 10-cent discount granted on a per case basis of Morton's free running and Morton's iodized salt, and 5-cents per case on the White Crystal salt, and varying discounts on other types of salt that you mentioned?

A. That is correct, with the exception of stock blocks.
Q. Do you receive a discount on that, sir?
A. No, sir.
Q. You don't get anything on stock blocks at all?
A. No, it is my understanding there is nothing on those at all.
Q. When you say "stock blocks", what do you mean?
1196 A. Fifty pound blocks of sulphur and plain.
Q. What are those blocks used for?
A. Stock feeding.
Q. The feeding of cattle?
A. Yes.
Q. They are put in the fields for cattle to lick during grazing periods?
A. Yes, sir.
Q. How long has the branch of the C. D. Kenny Company at Macon been in existence?
A. To my knowledge, 38 years.
Q. And you have been with them here for 12 years?
A. No, sir, I have been here since April 1, 1939.
Q. Where were you up to that time?
A. C. D. Kenny Company, Augusta, Georgia.
Q. And how long were you with C. D. Kenny Company in Augusta?
A. Let's see, I have been here a little over three years. Well, the balance of the time of the 12 years, I was in Augusta.
Q. I see, nine years in Augusta and three here?
A. Yes, sir.
Q. I believe you stated that you receive a credit memorandum from your main office in Baltimore showing your proportion of the discount received from the Morton
1197 Salt Company?
A. Yes.
Q. And will you tell me what you do with it after you receive it?
A. The credit memo, you are speaking of?
Q. Yes.
A. It is a notification to us that a credit has been passed to the general ledger in Baltimore. There is nothing for us to do at all about it, only to consider it is additional revenue earned that we didn't make any effort for, only to sell the goods. We never considered it reflected in our

cost from a salesman's standpoint; from my standpoint, I did.

Q. It is applied to the additional revenue earned for the entire year?

A. Yes, sir.

Q. Of this branch here in Macon?

A. Yes.

Q. Is the price at which your company pays for its requirements of salt an important factor in your business?

A. It is, to be competitive, from the standpoint of flats, and the other types of salt, but it is not necessarily in the rounds, not with me, to be competitive.

Q. It is not necessary to be competitive in the rounds?

A. Not unless you are figuring on a larger mark-
1198 up. At $1.50 cost, you can be competitive with anybody.

Q. At $1.40 cost, you can be more competitive, is that true?

A. Well—

Mr. McBride: I object to the question.

The Witness: If you want to consider that.

Mr. McBride: I object to the question on the usual basis, Mr. Examiner.

Trial Examiner Purcell: On what grounds?

Mr. McBride: It is the same question framed slightly different to which I have been objecting as a matter of routine all the way along.

Trial Examiner Purcell: Objection overruled.

By Mr. Haslett:

Q. So, the price that you do pay for your products is an important factor in your business, isn't?

A. Yes.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price your company sells its salt products for?

A. Would you repeat that question, please?

Mr. Haslett: Read the question.

(The question referred to was read by the reporter.)

The Witness: Yes, sir.

By Mr. Haslett:

1199 Q. C. D. Kenny's branch here in Macon, of which you are the manager, doesn't purchase $50,000 worth of salt per year, does it, from all sources?

A. No, sir.

Q. It doesn't purchase 50,000 cases of Morton's round package free running salt per year?

A. No, sir.

Q. You don't know whether C. D. Kenny Company's main office in Baltimore receives an additional discount on the round package free running salt, other than the 10-cent discount, do you, sir?

A. No, sir, I don't know of any.

Q. You wouldn't say they didn't receive it?

A. Oh, no, I wouldn't say that, but I am pretty well assured that there is no other discount that we would know of as branch managers. We are not supposed to know of any, if there is, and I don't think there is.

Q. You purchase salt from other companies other than Morton Salt Company, do you not, sir?

A. Yes, we do.

Q. Do you do any promotional work in connection with the sale of Morton's salt?

A. You mean, my company?

Q. Yes.

A. No, we don't, but Morton Salt Company does, 1200 with our men.

Q. Morton does with your men?

A. That is right.

Q. Will you explain that, please, sir, what type of promotional work is done?

A. When we buy cars of salt, it is usually the custom to have specialty work, promotional work done with our men in the way of reselling the salt, and to that extent they travel with our men and push their own products.

Q. They go out with your own salesmen?

A. At times, and then they travel independently.

Q. Do they go to your customers?

A. They go to our customers, yes.

Q. And promote the sale of Morton salt through your customers to the consumer?

A. No, sir, independently. They let them fall wherever they want to, but when they are traveling with my men, they usually always fall in our hands, but when they are working independently, just whichever jobber the retailer would want the order to come through, would get the business.

Q. Does Morton Salt Company pay your company any

monetary consideration for that privilege of doing the work with your men in connection with the sale of their own products?

A. No, sir.

Q. C. D. Kenny's branch at Macon is a branch of
1201 the main office at Baltimore, Maryland?

A. Yes, sir, one of 29 branches.

Q. One of 29 branches?

A. Yes.

Q. It has branches located throughout the South?

A. Yes.

Q. Would your business be affected by the fact that a competitor of your company sold Morton's salt at a 2-cent differential in price under the price that you were charging for salt of the same grade, quality and size?

A. Under the selling price?

Q. That is right.

A. For instance, $1.60 is our cost, and they sell it for $1.58?

Q. That is right.

A. It would be from a profit standpoint, yes.

Q. It would affect your business?

A. Absolutely, from a profit standpoint if we had to meet the competition.

Q. And if you didn't meet it, you would lose the business?

A. We would lose the business.

Q. Would your business be affected by the fact that one of your competitors purchased Morton's salt at $1.35 a case, while at the same time you were paying $1.40 a case for it?

Mr. McBride: If the Examiner please, I object.

1202 Trial Examiner Purcell: Objection overruled. He may answer.

The Witness: From the profit at the end of the year, I would say yes.

Mr. Haslett: I think that is all, Mr. Examiner. I will release him for cross-examination.

Cross-Examination by Mr. McBride.

Q. Mr. McFeely, in the course of your testimony you mentioned from time to time the fact that certain of your purchases were LCL shipments?

A. Yes, sir.

Q. In each of those cases, were you referring to less than carload lots in which you participate in a pool car?

A. Yes, sir.

Q. In other words, the LCL shipments to which you referred were not shipped as a less than carload lot to you alone, they always traveled in a pool car?

A. That is right. I probably should have said pool car, but I consider anything less than a car, LCL.

Q. Measured from your viewpoint as LCL?

A. Yes, sir.

Mr. McBride: That is all, Mr. Examiner.

Mr. Haslett: That is all, thank you very much, Mr. McFeely.

1203 (Witness excused.)

Mr. Haslett: May we have a short recess, Mr. Examiner?

Trial Examiner Purcell: A five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over.

Mr. Haslett: I will call as my next witness Mr. Whitfield. Come around and be sworn, Mr. Whitfield.

C. H. WHITFIELD was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. You are Mr. C. H. Whitfield?

A. Yes, sir.

Q. Where do you reside, Mr. Whitfield?

A. Milledgeville, Georgia.

Q. And how far is Milledgeville from Macon?

A. Thirty-three miles.

Q. Thirty-three miles?

A. Yes.

Q. In what business are you engaged?

A. Wholesale grocery business.

Q. And with what company are you connected?

1204 A. Whitfield Grocery Company.

Q. And where is that company located, sir?

A. It is located at Wayne Street on the Georgia Railroad. It intersects with Wayne Street in Milledgeville.

Q. Milledgeville, Georgia?
A. Yes, sir.
Q. What is the business of the Whitfield Grocery Company?
A. We are what is known as wholesale grocers. We sell groceries and allied lines to the retail trade.
Q. And what position do you hold with the company?
A. I am president of it.
Q. And how long have you been president?
A. Since 1908.
Q. That is a good long time. Is it a corporation, sir?
A. Yes, sir.
Q. Incorporated under the laws of what state?
A. Georgia.
Q. And in what territory does it sell its products?
A. From 75 to 100 mile radius of Milledgeville.
Q. It has trucks which it uses to transport its sold goods?
A. Yes, sir.
Q. Has your company any competitors?
A. Yes, sir.
Q. Name some of your competitors, please.
A. Well, in Macon we have Timberlake, C. D. Kenny, Modern, Cash & Carry; then in Dublin, we have Cochran Brothers, and W. R. Word & Company. Then, we come in contact on the edge of the territory with Kell, H. V. Kell Company, and Griffin Grocery Company. Those are our main competitors.
Q. Do you encounter the competition of Thomas & Howard?
A. No, sir, I don't think we touch them anywhere.
Q. Do you encounter competition from Atlanta?
A. No, sir. We go as far as Covington, Georgia, and of course, we come in with a little competition there. Of course, we come in competition with Webb-Crawford Company at Athens.
Q. Athens?
A. Yes, and Thompson Mercantile Company at Thompson.
Q. Does your company handle salt?
A. Yes, sir.
Q. And does it purchase salt from the Morton Salt Company?
A. Yes, sir.

Q. And what type of products does your company purchase from the Morton Salt Company?

A. We purchase bulk salt, that is 100 pound sacks, 50 pound sacks, 25 pound sacks, 10 pound sacks, in the bulk, and then we purchase what we call the nickel package salt under the brand of White Crystal. Then we purchase some of Morton's free running and Morton's iodized, that is, package salt.

Q. And does your company purchase from other 1206 processors of salt?

A. Occasionally, but very seldom.

Q. Morton Salt Company is your main source of supply?

A. Eighty to eighty-five per cent of our business.

Q. Approximately, do you know the dollar volume of business done with Morton Salt Company during a year's period?

A. I wouldn't know it.

Q. Well, just approximately, sir?

A. Well, we average, I think, about 10 or 12 cars, and they will generally run $600 to a car.

Q. About $7,200 a year?

A. Between $7,500 and $10,000.

Q. I believe you said you purchased some of the round package blue label salt?

A. Yes.

Q. Do you know approximately how many cases of that you purchase a year?

A. I would just have to approximate that, I didn't figure it up, but I would say from 100 to 200.

Q. From a hundred to two hundred cases of Morton's round package salt per year?

A. That is iodized and free running together.

Q. That has been sort of stable for the last several years?

A. Yes, just about the same each year, from 100 1207 to 200 cases.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. No.

Q. Does it purchase on a carload basis?

A. Yes, sir, altogether on cars, except occasionally we will run out of some number, which is very seldom, and we generally pick that up from their broker in Atlanta.

Q. From their broker in Atlanta?

A. Well, I think that they have a consigned stock there, I imagine they do. It is billed out by Morton, but that is where we would get it, in Atlanta. I don't think we have ever got in any in pool cars here in Macon.

Q. Do you know the price which you pay for Morton's round package salt per case?

A. $1.50.

Q. And when you pick up your requirements from Atlanta, do you pay the same price?

A. $1.50, yes. Of course, we have to haul it from Atlanta to Milledgeville.

Q. The Morton Salt Company doesn't allow you anything for that cartage?

A. No, sir.

Q. Is the price which your company pays for its requirements of salt an important factor in your bus-
1208 iness?

A. Yes.

Q. And is the price at which your competitor sells salt given consideration by your company in determining the price your company sells its salt products?

A. Yes, sir. We don't necessarily meet our competitors. We meet them if we can, if after we meet them it shows what we consider a legitimate profit. If it doesn't, we don't attempt to meet them. Of course, that gives them more volume.

Q. And to the detriment of your business?

A. Yes.

Q. What is the price at which your company charges for Morton's round package salt per case to its retailer customers?

A. $1.75.

Q. $1.75?

A. Yes, sir.

Q. Is that the general price charged to all customers?

A. Yes, sir.

Q. Mr. Whitfield, would your business be affected by the fact that a competitor of your company sold Morton salt at a 2-cent differential in price under the price that you were charging for the salt of the same grade quality and size?

A. It would if we met him, it naturally would make 2-cents less, or whatever the differential was, less

1209 profit. If we didn't meet him, why it would take off the bulk of the business.

Q. And what effect would it have on your business if one of your competitors purchased Morton's salt at $1.40 a case, while at the same time you were paying $1.50 a case?

Mr. McBride: I object, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer, sir.

The Witness: Well, he would be in a position to undersell us. He could either undersell us, or he could make more profit for himself.

By Mr. Haslett:

Q. Have you ever received a 5-cent allowance from the Morton Salt Company on its White Crystal salt?

A. No, sir, we have never received an allowance on anything. They have met certain price conditions at times. They have always told us that they would do as much for us as any other salt company, in other words, they would be competitive with their competitors as far as our business was concerned, but they have never offered me any discount off of any number, except they did make the statement that if I handled a certain number of that round package salt, that I would be entitled to a discount, but of course, the quantity was way beyond what we could handle.

Q. You say, they have offered to take off or make
1210 an adjustment, due to competition?

A. Yes, sir. In other words, if any other salt company, competitors with them, offered a lower price than they did, they would meet those competitive conditions.

Q. Do you know why they did that, sir?

A. They were just trying to hold our business. They were willing to do as much for us as any other competitor would do.

Q. If they hadn't done that, would you have transferred your business?

A. Occasionally, there would have been times I would have bought certain cars, treating cars as a separate proposition.

Q. I believe you stated that you purchase on a carload basis?

A. Yes, sir.

Q. Most of the time?
A. Yes.
Q. And that you do not receive any discount on the carload basis?
A. No.
Mr. Haslett: Mr. Reporter, I hand you three documents and ask that they be marked for identification as Commission's Exhibit 108-A, B, and C.
(The documents referred to were marked "Commission's Exhibit 108-A, 108-B, and 108-C" for identification.)

1211 By Mr. Haslett:

Q. Mr. Whitfield, I hand you what has been marked for identification as Commission's Exhibit No. 108-A, and ask you to state what that is, if you know what it is, sir. Is it an invoice from the Morton Salt Company?
A. Yes.
Q. Directed to your company?
A. Yes.
Q. Has it a number, sir?
A. Yes, 91,635, their invoice number.
Q. And has it a date?
A. August 15, 1940.
Q. Now, I refer you to Commission's Exhibit for identification 108-B, and ask you to state what that is, if you know, sir?
A. It is a bill of lading.
Q. From the Morton Salt Company?
A. From the Morton Salt Company, covering a shipment from Grand Saline, Texas, dated August 15, 1940.
Q. Then I will refer you to Commission's Exhibit No. 108-C, and ask you to state what that is, sir?
A. It is a railroad freight expense bill, their No. 390, dated August 21, 1940, covering that particular car of salt.
Q. Did you pay the freight on that car?
A. Yes.

1212 Q. And was the freight deducted from the invoice price?
A. Yes, sir.
Mr. Haslett: Mr. Examiner, I offer in evidence Commission's Exhibit for identification 108-A, B, and C.
Trial Examiner Purcell: Any objection, Mr. McBride?
Mr. McBride: I am not sure yet. No objection, Mr. Examiner.

Trial Examiner Purcell: There being no objection, the instruments described will be admitted in evidence and marked by the reporter as Commission's Exhibit 108-A, B, and C.

(The documents referred to, heretofore marked for identification as "COMMISSION'S EXHIBIT 108-A, 108-B, and 108-C" were received in evidence.)

By Mr. Haslett:

Q. Mr. Whitfield, do the salesmen of the Morton Salt Company call upon you?

A. Yes.

Q. What is the name of the salesman that calls upon you?

A. Mr. Campbell is what we call the jobber's salesman.

Q. Has anyone else from the Morton Salt Company called upon you?

A. Yes, he had men under him which we called detail salesmen. They go out and work the trade with our own salesmen.

Q. And they solicit orders with your own sales-
1213 men for Morton's salt?

A. Yes.

Q. Orders are placed with your company?

A. Yes, sir.

Q. How do you place orders for your requirements of salt from the Morton Salt Company?

A. Well, generally through Mr. Campbell. Sometimes we might wire the division office at Nashville or Southern office at Nashville direct.

Q. Do you place them with the salesman of the Morton Salt Company, as a result of which commodities are shipped to you at your warehouse at Milledgeville?

A. Yes, sir.

Q. Have you ever had any conversations with any salesmen of the Morton Salt Company with regard to the discount on the free running and iodized salt?

A. Yes, we have talked about it.

Q. Have you ever requested them to give you the discount?

A. No, I didn't request them, we fussed about others getting it.

Q. You mean, your competitors getting it?

A. Yes, sir, they offered it to us if we could buy the quantity, which my recollection is was 5,000 cases of that

particular round. We couldn't buy that much. Of course, at that time we had in mind our competitor Kenny,
1214 and I made the suggestion, or rather, not suggestion, but made the criticism that it wasn't fair to let all of Kenny's stores make up that 25,000 cases, or whatever was the amount, that each branch should stand on its own, just like our one store did.

Q. You wanted to be put on the same net basis as C. D. Kenny's branch at Macon?

A. Yes, although to be perfectly frank about it, I wasn't so particularly interested in round package salt, because our business doesn't amount to enough to get excited about in that line.

Q. You were interested in other types of salt?

A. We were trying to buy salt just as cheap as anybody.

Q. Mr. Whitfield, would your business be affected by the fact that one of your competitors was getting a discount on a carload basis from the Morton Salt Company of an amount equal to approximately 5 per cent of the volume price, while at the same time you were purchasing on a carload basis and not getting any such discount?

Mr. McBride: If the Examiner please, I object to that; first, my usual objection, and second, 5 per cent of the volume price, there is nothing in the record about that.

Mr. Haslett: I said in an amount equal to approximately 5 per cent.

Mr. McBride: Of the invoice price?

1215 Mr. Haslett: That is right.

Mr. McBride: There is nothing in the record to support that sort of a question, if the Examiner please.

Mr. Haslett: Mr. Examiner, the complaint specifies practically the same wording, I think, that I have just used, and I have had Mr. Peterkin on the stand in Chicago, who testified that such a discount was given.

Trial Examiner Purcell: Not only that, but I believe, if my memory serves me correctly, the answer admits it.

Mr. McBride: To the contrary, it was on the net works basis, which is quite a bit different than the invoice price. There is nothing in the record or the answer that suggests at all a 5 per cent or approximately 5 per cent of the invoice price. Counsel will observe that there is freight included in most invoice prices.

Trial Examiner Purcell: Off the record here.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

Mr. Haslett: Mr. Examiner, I will clear it up with another question, and I will withdraw my former question relating to the invoice price.

Trial Examiner Purcell: Very well, sir.

By Mr. Haslett:

Q. Mr. Whitfield, I hand you now Commission's 1216 Exhibit No. 108-A, and ask you to state whether or not you received a discount amounting to approximately 5 per cent off of the net amount of the invoice as stated thereon?

Mr. McBride: I object to that, if the Examiner please, I don't know what the next amount means.

Mr. Haslett: Net amount is less freight.

Mr. McBride: All right.

The Witness: You want to know if I received any discount off of this net amount?

By Mr. Haslett:

Q. Yes.

A. I did not.

Q. Then, am I correct when I state, Mr. Whitfield, that the Whitfield Grocery Company, of which you are president, does not receive any discount or allowance, rebate of any type from the Morton Salt Company, other than when the Morton Salt Company elects to meet the equally low price of a competitor who is selling to you, also?

A. That is correct.

Q. But does not receive any discount on its round package salt, or any other type of salt?

A. It does not.

Q. Now, would your business be in any way affected by the fact that some of your competitors receive a discount amounting to approximately 5 per cent over and above the regular discount granted on a carload 1217 basis?

Mr. McBridge: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled, you may answer.

The Witness: Yes, it would be affected.

By Mr. Haslett:

Q. And adversely affected?

A. Yes, sir.

Q. Now, you spoke of promotional work done in connection with the resale of the round package salt by your company to its customers.

A. Yes, sir.

Q. Where Morton's salesman traveled with your own salesman to promote the sale of that product. Will you tell us just what that is, sir?

A. Well, it is just a case of Morton Salt Company's salesman going with our salesman over the territory, calling on the retail trade and trying to sell them salt, not necessarily just that one package, but the full line, if we might have them, and they sell it, they take the orders for it and turn them over to our salesmen, and we invoice it out to them and it is delivered.

Q. They are furnishing that service to you to promote the sale of their own products?

A. Yes, sir.

1218 Q. In which you benefit jointly with Morton Salt Company?

A. We get our jobbing profit out of it.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit 109 for identification.

(The document referred to was marked "Commission's Exhibit 109" for identification.)

By Mr. Haslett:

Q. Mr. Whitfield, will you describe the exhibit which I hand you, which has been marked for identification as Commission's Exhibit 109?

A. This is an invoice from the Morton Salt Company, No. 75,431, dated October 15, 1941.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence as Commission's Exhibit No. 109, and so marked by the reporter.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 109" was received in evidence.)

By Mr. Haslett:

Q. Mr. Whitfield, I now hand you Commission's Exhibit No. 109, and ask you to state whether the prices contained thereon are the list prices?

1219 A. Yes, sir.

Q. The list prices appear on the invoices?

A. Yes, these are the list prices that appear on the invoices.

Q. Did you receive any discount on the commodities purchased as represented by Commission's Exhibit No. 109?

A. No.

Q. When you pay your bills to the Morton Salt Company, do you send them direct to Chicago or to the branch office at Nashville, or to the state office in Atlanta?

A. I think they go to Chicago.

Mr. Haslett: I think that is all.

Mr. McBride: I have no questions, Mr. Examiner.

Mr. Haslett: Mr. Reporter, I hand you three documents and ask that they be marked for identification as Commission's Exhibit 110-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 110-A, 110-B, and 110-C" for identification.)

By Mr. Haslett:

Q. Mr. Whitfield, I hand you what has been marked for identification as Commission's Exhibit No. 110-A, and ask you to state what that is, if you know, sir?

A. That is a credit memorandum.

Q. From whom?

A. From Morton Salt Company for $23.80, dated

1220 July 30, 1940.

Q. What is Commission's Exhibit No. 110-B for identification?

A. That is our invoice against Morton Salt Company, dated July 24, 1940, No. 43,977.

Q. And I show you Commission's Exhibit for identification, No. 110-C, and ask you to state what that is, if you know, sir?

A. That is our invoice against Morton Salt Company, numbered 44,032, dated July 26, 1940.

Mr. Haslett: I offer the documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be admitted in evidence as Commission's Exhibit No. 110-A, B, and C, and so marked by the reporter.

(The documents referred to, heretofore marked for

identification "COMMISSION'S EXHIBIT 110-A, 110-B, and 110-C" were received in evidence.)

Mr. Haslett: I have no further questions.

Mr. McBride: No questions.

Mr. Haslett: Thank you very much, Mr. Whitfield, for coming.

(Witness excused.)

Mr. Haslett: Mr. Barnett, come around and be sworn, please.

1221 GEORGE BARNETT was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Your name is George Barnett?
A. Yes, sir.
Q. You reside in Macon, Georgia?
A. Yes, sir.
Q. And in what business are you engaged?
A. Manager of the Mulberry Market.
Q. And what is the busine[illegible] of the Mulberry Market?
A. Retail and wholesale groceries.
Q. And where is it located, sir?
A. 418 Mulberry Street.
Q. In the city of Macon?
A. Yes, sir.
Q. Is it a corporation, sir?
A. No, sir, it is a partnership.
Q. And you are in partners with someone else?
A. Yes.
Q. What is the nature of your partnership?
A. My father, N. M. Barnett, and two brothers, Matthew and Samuel Barnett.

Q. Is the ownership of the partnership equally
1222 divided among the four of you?

A. No, it is not equally divided.

Q. You own a larger percentage of the business than your brothers and your father?
A. Yes.
Q. Do you manage the business?
A. Yes.

Q. And you say you sell at retail to the consuming public?

A. Retail and wholesale.

Q. And at wholesale, also?

A. Yes.

Q. Confirming the following question to your wholesale business, what territory is covered by the Mulberry Market, wholesale?

A. Just Macon.

Q. Just the city of Macon?

A. Yes.

Q. And, of course, you sell only at retail in the city of Macon?

A. That is correct.

Q. You have just one market?

A. Yes.

Q. Is it a super market?

A. Yes.

Q. It is a super market?

1223 A. Yes, it is a super market.

Q. What do you mean by a super market?

A. Well, it is a large market with different departments all under one roof.

Q. Is it a self-serving store?

A. Yes, self-serving. We deliver to cafes and institutions, but that is all.

Q. Have you any competitors in your wholesale field?

A. Well, I would consider different wholesalers in Macon as competitors.

Q. The C. D. Kenny Company?

A. C. D. Kenny Company, Timberlake, Modern and Word.

Q. And do you also have some competitors in the retail field?

A. Yes, sir.

Q. Will you name some of those, sir?

A. Well, I would say the Big Star, A&P, Rogers, Piggly Wiggly.

Q. Is Rogers a chain organization?

A. Yes.

Q. Is A&P a chain organization?

A. Yes, sir.

Q. Big Star?

A. Yes, sir.

Q. Is that a member of a chain?

1224 A. I think it is the same thing that Rogers is with, that is, Colonial Stores.

Q. Colonial Stores out of Atlanta?

A. I think it is out of Atlanta, yes.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. Does it purchase any salt from the Morton Salt Company?

A. Yes, sir.

Q. Does it also purchase from other salt processors?

A. Well, we purchase about 90 per cent from Morton and about 10 per cent from other sources.

Q. How are your orders placed with Morton Salt Company for your requirements?

A. Well, the majority of it is placed with Mr. Roquemore.

Q. Mr. Roquemore?

A. Yes.

Q. Is he the local representative for the Morton Salt Company?

A. Well, he calls on us.

Q. He calls on you?

A. Yes.

Q. As a result of which, you place orders with Mr. Roquemore, and then commodities are shipped to you by Morton Salt Company?

A. That is right.

1225 Q. What type of salt do you purchase from the Morton Salt Company?

A. Well, we purchase 100 pound sacks of Kleer salt. Then we have 100 pounds of ice cream salt, 10 pound bags, 25 and 50 pound bags, and we have the pound and a half package.

Q. Is that the free running and iodized salt?

A. No, we have that also, but—

Q. What is the pound and a half package?

A. That is the regular nickel seller, it is a small square package.

Q. Is it Kleer salt?

A. Our brand is Kleer that we sell, the name of it is Kleer.

Q. Then, in addition to those, you handle round package free running and iodized salt?

A. Yes, sir.

Q. Do you know the price which you pay for Morton's round package free running salt?

A. $1.50.

Q. Per case?

A. Yes.

Q. What do you sell your round package free running salt for at wholesale?

A. $1.65.

Q. $1.65 per case?

1226 A. Yes.

Q. And how much at retail, sir?

A. Two for 15.

Q. Two packages for 15-cents?

A. Yes.

Q. When you said $1.65, you meant $1.65 a case?

A. Per case, yes, 24 packages.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. No, sir, we do not.

Q. You receive none whatsoever?

A. No, sir.

Q. Do you do any purchasing on a carload basis?

A. Well, we may have bought one car. Most of ours is in pool car shipments. I think we bought a car probably in the last part of last year.

Q. On that car that you bought last year, did you receive any discount?

A. No, sir, we did not.

Q. When it comes in a pool car, does it come in a car with purchases of your competitors from the Morton Salt Company?

A. I think so.

Q. And do you haul it from the siding to your warehouse?

A. I think it has been shipped to the M&M Distributing Company, and we haul from there.

1227 Q. You haul from the M&M Distributing Company to your warehouse?

A. That is right.

Q. Does Morton Salt Company pay you for that cartage?

A. No, sir.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. I would consider it so, yes, sir.

Q. And is the price which your competitor sells salt given consideration by your company in determining what price it is going to sell its salt?

A. That is right.

Q. Would your business be in any way affected by the fact that one of your competitors was selling salt at $1.60 a case, while at the same time you were selling it at $1.65 a case?

A. It would, yes.

Q. And would your business be in any way affected by the fact that some of your competitors purchased Morton's round package blue label free running and iodized salt at $1.40, while at the same time you were paying $1.50 per case for it?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: Well, if they were paying $1.40 and
1228 we were paying $1.50, naturally they could undersell us.

By Mr. Haslett:

Q. They could do what, sir?

A. They could undersell us.

Q. Would your business be in any way affected by the fact that some of your competitors are getting a discount amounting to approximately 5 per cent over and above the carload discount on its purchases of salt from the Morton Salt Company?

Mr. McBride: I make my objection now, on the usual grounds.

Trial Examiner Purcell: The usual ruling.

The Witness: If they used that to cut the price, it would affect us, if they used that additional 5 per cent.

By Mr. Haslett:

Q. If they cut the price, it would affect you?

A. It would affect us.

Q. What effect would it have on your business if the A&P Tea Company were selling salt at 7-cents a package to the consumer, while at the same time you were selling it for 7½-cents a package, or two for 15-cents?

A. Unless we met that price, naturally we will lose some business.

Q. In regards to salt?

A. Yes, sir.

1229 Q. Now, what effect, if any, would it have upon your business if the A&P Tea Company were purchasing the Morton's round package salt at $1.35 a case, while at the same time you were paying $1.50 a case for it?

Mr. McBride: I object to that, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: They could undersell us then, because naturally there will be a 15-cent difference in a case.

By Mr. Haslett:

Q. And it would affect your business?

A. Oh, yes, sir.

Q. Adversely?

A. Well, I don't know just how much, but naturally—

Q. I said, adversely?

A. That is right.

Q. Approximately how many cases of Morton's free running salt do you purchase a year from the Morton Salt Company?

A. Well, on an average, around 200 cases.

Q. Around 200 cases a year?

A. Yes, sir.

Q. And has that been about the same for the past several years?

A. Well, we have checked it for the last two years, and it is about the same.

1230 Q. About the same?

A. Yes, sir.

Q. And do you know the dollar volume of business done with the Morton Salt Company in the last year?

A. No, sir, I do not.

Q. How long has the $1.50 price been in effect?

A. As long as I can remember.

Q. For a long time?

A. Yes.

Q. How long have you been in business?

A. Oh, about 20 years.

Q. In the same type of business?

A. Well, for the last, I will say eight years in the same type of business. Of course, it has always been a grocery business, but not on as large a scale.

Q. Not on as large a scale as you are now?

A. That is right.

Q. Do you know the price at which Rogers is selling Morton's round package free running salt per package to the consuming public for?

A. No, I do not.

Q. Do you know what the price is that AP are charging for it?

A. I understand that the chains are selling for 7½, the same price we are selling for. That is all I know.

1231 Occasionally we will check prices to see if we are in line.

Q. Why do you check prices?

A. Well, to stay in line.

Q. What do you mean by that?

A. To see if we are in line. If we are not—well, I don't know how to word it, except to see that we are not being undersold.

Q. You check prices in order to see that you are not being undersold?

A. That is right.

Q. Why don't you want to be undersold?

A. We want to try to do as much business as we can, because we do a self-service business, and naturally we don't expect the customer to pay us any more than they do A&P or Big Star.

Q. Is the Big Star and Rogers the same organization?

A. I understand they are controlled by the same company.

Q. And what is the name of that company, sir?

A. I think it is Colonial Stores.

Q. Has Morton Salt Company ever made any competitive adjustment on salt that you had formerly purchased from them?

A. Oh, we might have made, I think, one or two adjustments of about a nickel a case, I think, on a price decline.

Q. On a price decline?

A. Yes.

1232 Q. You mean, that is where the price goes down and Morton makes it good?

A. Yes.

Q. How is that brought about, sir?

A. Well, if we have a shipment of salt, and the price declines a nickel, I don't think it has happened over once or twice, why, we are covered by it.

Q. You are covered by the Morton Salt Company?
A. Yes, sir.
Q. When you say "covered," you mean, Morton Salt Company makes it good to you?
A. That is right.
Q. But that is on rare occasions that that happens?
A. Yes, sir.
Mr. Haslett: Your witness, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Mr. Barnett, I believe you stated that on one or two occasions, so nearly as you can recall, you purchased a full carload of salt?
A. I think on one occasion.
Q. As far as you know, you received the carload price for that salt?
A. Yes, sir.
Q. I believe, also, that you stated that so far back as you had checked your record, you have been averag-
1233 ing about 200 cases of Morton's blue can a year?
A. Yes, sir.
Q. Has your volume been about the same, also, so nearly as you can recall, on other items of Morton's salt which you handle?
A. Yes, sir.
Q. So, there has been practically no variation in your volume over a period of time?
A. No, sir.
Q. Does this price that you state is the wholesale price on Morton's blue can, $1.65, how long has that been in effect, Mr. Barnett?
A. Oh, it has been about eight months, or maybe a year.
Q. It may have been longer than that?
A. How is that?
Q. It may have been longer than that?
A. It may have been.
Q. And this price in your retail business, two for fifteen, how long has that been in effect?
A. I think that is the price we have had on it as far as I can remember.
Q. In other words, you have been carrying Morton's blue can in your retail store for a good many years, and you have had the two for fifteen price during that time?

A. Yes, sir.

1234 Mr. McBride: I believe that is all, Mr. Examiner.

Trial Examiner Purcell: Any redirect?

Mr. Haslett: No, sir, no redirect.

(Witness excused.)

Trial Examiner Purcell: Any more witnesses?

Mr. Haslett: No, sir.

Trial Examiner Purcell: Mr. McBride, your numbers are 107 to 110-C.

Mr. McBride: Mr. Examiner, I have been kindly furnished by Mr. Haslett with Commission's exhibit 107-A to E. I should like to make my request, however, with respect to Commission's exhibit numbers 108-A to 110-C for photostating, thereafter the originals to be returned.

Trial Examiner Purcell: Granted.

1235

Room 300,
Henry Grady Hotel,
Atlanta, Georgia,
Thursday, May 14, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

1236 Mr. Haslett: I will call as my first witness for the Commission, Mr. Examiner, Mr. Harris Dodd.

HARRIS DODD was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

1237 *Direct Examination by Mr. Haslett.*

Q. Your name is Harris Dodd?
A. That is right.
Q. And where do you reside, Mr. Dodd?
A. Our office is at 682 Whitehall.
Q. I say, where do you reside?
A. My home address is 4094 Club Drive.
Q. In what business are you engaged?
A. Chain grocery.
Q. And with what company are you connected, sir?
A. I am connected with Colonial Stores, Inc.
Q. And is that a corporation?
A. It is a corporation.
Q. Incorporated under the laws of what state, sir?
A. As I understand it, the laws of Delaware. The headquarters office is in Norfolk, Virginia. We are known as the southern division.
Q. The southern division of the Colonial Stores?
A. Southern division of Colonial Stores, yes.
Q. What is the business of Colonial Stores, Inc.?
A. Colonial Stores, we operate the Rogers, Big Star and Little Star chain of grocery stores.
Q. They sell groceries and allied products through
1238 their wholly owned retail stores direct to the consuming public?
A. That is correct.
Q. And what territory from this office do you have stores located?
A. We operate throughout the entire state of South Carolina, the state of Georgia, there is approximately seven stores in the state of Alabama, and one in Florida, located at Tallahassee.
Q. And the office of Colonial Stores, Inc., where the purchases for its requirements of these various stores that you have mentioned, are made, is located in the city of Atlanta, Georgia?
A. That is correct, 682 Whitehall.
Q. And Whitehall Street is in the city of Atlanta?
A. Atlanta, Georgia.

Q. What position do you hold with the company?

A. I am purchasing agent for the company.

Q. That is, the southern division?

A. The southern division, that is correct.

Q. And how long have you been associated with the Colonial Stores, Inc.?

A. Approximately 25 years.

Q. And how long have you been purchasing agent?

A. Since 1930.

Q. Does your company sell, through its retail 1239 stores, salt to the consuming public?

A. Yes, we do.

Q. And does it purchase salt from the Morton Salt Company?

A. Yes, we do.

Q. And does it also purchase from other companies?

A. Yes, we do.

Q. What are your duties in connection with the position that you hold with the Colonial Stores?

A. Head of the buying department of the Colonial Stores. In addition to that, I sit in on all merchandising plans, including advertising schedules, any price changes that might be, and work in connection with the traffic department for the operation of the different warehouses we control in the southern division, and I am responsible for the cost accounting of the company, and any other studies or things especially that need to be done from a general broad merchandising viewpoint.

Q. Is one of your duties as the buyer for Colonial Stores, Inc., to place orders for its requirement of salt?

A. Either place orders or see that someone under my supervision does.

Q. But it is done under your supervision?

A. Yes, it is.

Q. And you place orders with the Morton Salt Company?

A. I either place them or someone representing the 1240 company under my supervision places the orders.

Q. And what type of salt does your company buy from the Morton Salt Company?

A. We buy the round carton of salt for general stocking throughout the entire chain.

Q. Is that their blue label free running and iodized salt?

A. Blue label free running and iodized salt, yes. It is advertised extensively as Morton's free running. Then, in

Tallahassee, Florida, if my memory serves me correctly, we are using some of the square cartons, and we have bought some Spot Point placed at Valdosta. The record on that shows the individual places. We are so scattered, and buy so much, I wouldn't want to say without referring to the records the exact number of cities we bought the square for.

If I might make this statement, as to why I answer it that way: You see, we operate a number of warehouses, one at Thomasville, Georgia, Savannah, Georgia, Charleston, South Carolina, Greenville, South Carolina, and then we have had an extensive back-haul setup whereby we purchase salt at Columbus, Georgia. We were doing quite an extensive business at Valdosta and some in Augusta, Georgia, and various other points, so it would be impossible for me to tell you every case we bought and what quantities at all different locations without referring to some records.

Q. And do you have buyers located in these various 1241 warehouses, or do you do the buying for all of them?

A. We have buyers located at all the regular warehouse points for pickup buying only. They do not take on any new lines, or anything, but lots of times they can pick up orders locally to participate in pool cars; they do some of that.

Q. And is all of the salt purchased from the Morton Salt Company for the requirements of the Colonial Stores, Inc., and its various branches or warehouses, purchased through the Colonial Stores, Inc., office here in Atlanta?

A. No, sometimes they order out from the other places, like Greenville, and participate in pool cars of stuff that comes in, but it is under the supervision of the Atlanta office.

Q. All of the records are kept here?

A. All of the records are kept in the Atlanta office, a complete record.

Q. They are the only types of salt, that is, the round package salt, and the square package salt, that you purchase from the Morton Salt Company? Do you purchase any bulk salt?

A. I would rather refer to the records. I am inclined to believe that we have picked up some bulk salt and also some ice cream salt. I would rather refer to the records specifically on that.

1242 Q. Do you know the price that your company pays for Morton's round package blue label free running and iodized salt per case?

A. Well, the price we paid and have been for some time, if my memory serves me correctly, it is invoiced at $1.50 a case, and I noticed recently it is invoiced at $1.60, I was informed, less 10-cents a case, and extended at $1.50. That is the invoice price.

Q. And what is the price that your company charges for its Morton's round package free running salt per package through its retailer stores?

A. Well, frankly, I haven't got our selling price with me, you see. Let me make this explanation: You see, we operate a super market chain system of pricing. We operate the conventional type store, and we have one setup for prices for the city of Atlanta. We have one for the Georgia-Alabama setup. We have another zone that is zoned in the coastal district. We have another zone that is zoned in the South Carolina district, and then that series of zones is practically duplicated in the super market setup, so you see, we have approximately eight different zones, and it would be rather hard for me to tell you without referring to our prices or records. We have a record at the office of every price we have sold Morton's salt for in the last 12 months, but not in all districts. We have it in the main districts.

1243 Q. Do you know what price your company charges for Morton's round package salt through its retailer stores at the present time in the Atlanta area?

A. We have got about 3,000 items. I think we are getting 9-cents in the regular stores, but I wouldn't want to say that authoritatively. I would have to refer to the records. We have got so many different prices, it is hard for me to remember the cost of selling in all zones. We have it on record in the office, of course.

Q. Could you call on the telephone and determine that, sir?

A. I would be glad to do it, sir. Shall I do it now?

Q. Yes, if you please.

A. All right.

Q. Mr. Dodd, have you had an opportunity now to determine the selling price charged by your stores to the consuming public for Morton's round package salt in the various type stores operated in the Atlanta area?

A. The selling price is 7-cents in super market operations, and 9-cents in conventional stores.

Q. And how long has that price been in effect?

A. For a period of over 12 months.

Q. Now, you were speaking about the various types of stores operated by your company. Would you state in detail the difference between the various stores, the conventional stores and the super markets?

1244 A. I will make it as brief as possible. We were originally the normal chain grocery setup of the corner type grocery store, known as Rogers Stores. Later, we opened the super market stores on a larger scale and found that we could sell for a less price, and still operate through increased volume and make some profit. But, then, between the two, we found a need for an additional type store, which we call the Little Star Market, which has approximately the same general setup as the super market on a smaller scale, and in this type of store we carried seven to eight hundred items more than the corner type Rogers Store. It is kind of a proposition to fill the gap in between the two, one where we can get sufficient volume with a little wider variety of merchandise. That is the reason for the three types of stores which we operate.

Q. And do you know the number of stores operated by Colonial Stores, Inc., of the super market type?

A. I know approximately the number. We open and close and change so fast. We have approximately 40 super markets in the southern division. I would rather consult the records, but I would say we have got around 35 of the Little Star Stores, we have opened several recently. I could get the information to the minute at the office, if you would like to have the exact number of stores we operate.

Q. Well, the approximate number, if you can remember, sir?

1245 A. I would say in the Rogers Stores, we have got approximately 200 left right now.

Q. 200?

A. Of the Rogers type corner stores.

Q. And how many of the super markets?

A. About 40.

Q. Now, have you any particular name designation for the super market stores?

A. Big Star Super Market.

Q. Big Star?
A. Yes.
Q. And what is the name designation for the conventional type store?
A. Rogers.
Q. Just Rogers?
A. Yes.
Q. And have you any other name for any other particular type stores?
A. Little Star, we call them Little Star Food Stores.
Q. And what are they, sir?
A. That is the one in between the super market and the conventional store, I was referring to a while ago.
Q. How many of those do you operate?
A. About 35, I believe I stated. That is approximately correct.
1246 Q. Now, you testified that your company purchases Morton's round package free running salt, both plain and iodized?
A. We do.
Q. Does your company receive any discounts or allowances from the Morton Salt Company on its purchases of round package free running salt?
A. Yes, at the present time we receive 10-cents a case.
Q. And how is that paid by the Morton Salt Company?
A. I think it is paid by check usually. I might say the reason I think that, we sent the record of what we are supposed to receive to our accounting office, and from time to time they would notify us whether different concerns for advertising, and what have you, pay off. I understand these people pay by check.
Q. And does your company purchase in excess of 5,000 cases of free running and iodized salt from the Morton Salt Company during a 12 consecutive months' period?
A. Yes, we do.
Q. And I believe you stated that you have warehouses in various locations, such as Thomasville, did you say?
A. We have a warehouse at Thomasville now. We opened it just after the turn of this year.
Q. Does the warehouse at Thomasville purchase 5,000 cases of Morton's free running salt for its use during a 12 consecutive months' period?
1247 A. I couldn't give you any breakdown of the individual warehouses without referring to the records.

Our moving records are consolidated in the Atlanta office, and all are carried at one place. After all, it is one company, and I don't believe in Charleston we carry the Morton round package salt at all. We are supposed to have it in stock at the Thomasville warehouse. The complete warehouse of all operations is in Atlanta. I think I had better make that explanation so you will understand our setup. We have a complete warehouse here, of course, that is, everything, all super market items and conventional. We have another complete warehouse for the conventional items only, of which Morton is one of, at the Greenville, South Carolina, warehouse. We operate a sub-warehouse. then we distribute our merchandise from Charleston and Savannah, taking advantage of the back-haul facilities to help our trucking situation in Savannah and Charleston. Up to the present time, our warehouse has been partial in Charleston. We buy 80 per cent normal conventional items, and we are trying to build that up to 100 per cent items, and for that reason, it would be hard to separate any individual item we have, because if we do not have it in stock in one of the outside places, we fill it out of the Atlanta warehouse to that point.

Q. What do you mean by conventional items?

A. Those that are stocked in Rogers Stores. You
1248 see, we have a rather confusing setup to an outsider. We stock certain basic items in all Rogers Stores.

Q. Is Morton salt one of those basic items?

A. Morton salt is one of those basic items, yes, that is, the general stock type.

Q. And it also is stocked in the Big Star Stores?

A. Oh, yes, it is stocked in all stores we operate.

Q. In all stores?

A. Yes, sir.

Q. Now, the purchases of Morton's blue package salt placed by your company, or the orders placed by your company with Morton Salt Company for its round package blue label free running and iodized salt, upon which you receive a discount of 10-cents a case, is the combined purchases of all warehouses?

A. That is my understanding, it is all warehouses. You see, we pay all bills out of Atlanta. They don't pay for anything at outside points.

Q. Do you know approximately the number of cases your company purchased from the Morton Salt Company during the period of 1941?

A. I think I have a record of all of our salt purchases with me for that year.

Q. Just the Morton's round package free running and iodized salt.

1249 A. There were two figures here that I would have to add together. The records show in 1941, 3,988 of the free running and 4,995 of the iodized.

Q. Making a total of what?

A. Of 8,983 cases. This report is taken from our regular movement records.

Q. And that was the combined purchases of all warehouses?

A. That is our total movement of salt in the southern division.

Q. Total movement from the warehouses to all stores?

A. From every source we know that we might have obtained any Morton's salt. That is the consolidated report from everywhere.

Q. How are orders placed by your company with the Morton Salt Company for its requirements?

A. Well, it is placed various ways. Sometimes a representative of the Salt Company might be in, and if they are not there, it is placed through brokerage setups. It just depends. In other words, if they find they need salt, someone just orders it and participates in a pool car and writes out the order.

Q. And who is the broker that you have your dealings with that represents the Morton Salt Company in Atlanta, Georgia?

A. The one in Atlanta is the Loeb Apte Company. Mr. Simpson is the one that usually calls on us from that

1250 company.

Q. And on other occasions, you give the orders direct to the salesman from the Morton Salt Company for your requirements?

A. I doubt seriously if we have ever given an order direct to the salesman, because the usual procedure is that the salesman usually comes in with the broker. It is more or less of a proposition that they don't want to come separately, and I wouldn't want to say that we have ever handed an order direct to the representative, because personally I wouldn't.

If you had a broker and called on me, I would show your broker the courtesy to handle the order, because he is your

direct representative. I wouldn't go over his head and hand it outside. We sometimes might have done it. I wouldn't want to make a definite statement on that.

Q. When your company receives its check from the Morton Salt Company upon its purchases of the round package blue label free running and iodized salt, what does it do with that money?

A. Well, the way we keep up with those things, we have a record upstairs that we set up of all concessions of any nature whatever, for any service that we might be paid for, and they keep it on the accounts receivable books, and of course, when the money is received, naturally they credit it to the particular account, and it is deposited in the
1251 bank like any other receipts of money that might come in.

Q. Do you know what the money is used for?

A. It is used for general operations of the business. In other words, if it is for advertising, of course, we allocate and have it charged to advertising, and have the records show that we have advertised, but let me make this clear: We don't attempt to keep a separate bank account for advertising and a separate bank account for displays. It is all in one bank account, and that goes into general operation of our business, but we do keep a record, so that any monies that we might receive in our company that we do the thing that we are supposed to do with that, so we will not run afoul of any of the laws of the Robertson-Patman Bill or the Federal Trade Commission, or anything else. We have got a record in our office complete, and we show copies of newspaper advertising; we keep photostatic copies of ads we run in Atlanta papers, and have for several years, so we can support our records.

Q. Does your company purchase any salt from the Morton Salt Company on a carload basis?

A. Oh, yes, we participate in carloads and pool cars. Now, I don't know as to whether we have got a full car at one time. I would have to consult the records on that, because I don't try to keep up with that. I can look at the invoices and tell you, but I wouldn't want to say off-hand.

1252 Mr. Haslett: Mr. Reporter, I hand you a document and ask that you mark it for identification as Commission's Exhibit No. 111.

(The document referred to was marked "Commission's Exhibit 111" for identification.)

By Mr. Haslett:

Q. Mr. Dodd, I hand you herewith what has been marked for identification as Commission's Exhibit No. 111, and ask you to describe it, if you will, sir. What is it, sir?

A. It is an invoice from Morton Salt Company, No. 70113.

Q. Is that the invoice number?

A. That is the invoice number.

Q. And has it a date on it, sir?

A. The date is September 30, 1941.

Q. And is that for a carload of salt from the Morton Salt Company?

A. Let me see the bill of lading. The complete records are attached to our receiving records, if you don't mind, and I can tell you a lot better with our complete record. This appears to be a carload of salt. Yes, it is. The total sum is 48,350 pounds; that would make a car of salt.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence, and 1253 marked by the reporter as Commission's Exhibit No. 111.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 111" was received in evidence.)

By Mr. Haslett:

Q. Mr. Dodd, I again hand you Commission's Exhibit No. 111, and ask you to state whether or not your company received any discount on a carload basis on the products as represented on Commission's Exhibit No. 111?

A. Please repeat that, so I can get the exact wording.

Mr. Haslett: Read the last question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: To the best of my knowledge and belief, by the information as indicated here under our Q. D., or quantity discount, on our records, the way we keep them, there was nothing received on this other than the 10-cents a case that I have testified about. I am referring specifically to testimony as to Morton's round package free running and iodized salt. If there is anything beyond that, it is not to my knowledge, because it is not indicated hereon, and I did not authorize anything beyond that. It is the

best of my knowledge and belief that the office would notify me if they did.

By Mr. Haslett:

1254 Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Why, definitely so, the same as any other item.

Q. And is the price at which your competitors sell salt given consideration by your company in determining the price your company sells its salt products at?

A. It is absolutely necessary that we be competitive on all items, particularly anything as important as salt.

Q. Is your business affected by the fact that one of your competitors receives from the Morton Salt Company a discount of 15-cents per case on its free running and iodized salt, while at the same time your company receives only a 10-cent discount per case on its Morton's free running and iodized salt?

Mr. McBride: I object to that question, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: I would say that we are penalized to the extent of any discrepancies or differences in cost that our competitors might buy in relation to us, on any item, including salt.

By Mr. Haslett:

Q. What effect would it have on your business, Mr. Dodd, if one of your competitors was selling Morton's
1255 round package blue label free running and iodized salt at one-cent in price per package under the price that your company was charging for the product of the same grade, quality and size?

A. Well, it would naturally hurt our salt business, and probably some of the other business, but we wouldn't allow anyone to undersell us on an item as important as Morton's salt, regardless of cost.

Q. You mean, you would meet the competition?

A. Yes, sir.

Q. Why would you meet it?

A. For the simple reason that if you don't meet competition and keep your prices in line, you will soon be out of business. We can't afford to have people undersell us in the same type of business we operate.

Q. Does your company receive any other discounts from the Morton Salt Company other than the 10-cent discount on its free running and iodized salt?

A. I presume you refer to the squares, the one and one-half squares, that I referred to a minute ago. It is my understanding that the office is collecting, we are getting checks for the 5-cents a case additional, which is under another setup that you haven't brought up. I don't know whether to refer to it or not, the $50,000 proposition, which all of you are certainly familiar with in salt.

1256 Q. Well, does your company purchase from the Morton Salt Company $50,000 worth of salt during any 12 consecutive months' period?

A. From Morton Salt alone, we do not; from all companies together, we do.

Q. But from the Morton Salt Company alone, you do not purchase $50,000 worth of salt per year?

A. No, we do not from the Morton Salt Company alone.

Q. And you are getting a discount from the Morton Salt Company amounting to approximately 5 per cent off the list price on all grades of salt other than the round package blue label free running salt, is that correct, sir?

A. That is either 5-cents, or a unit, which is 4½-cents. I would have to refer to the records, but we get the usual allowances from the other salt companies.

Q. And you get it also from the Morton Salt Company?

A. That is the information the office furnished me. We do get it from the Morton Salt Company. I know we are supposed to, and I presume they have paid it, or otherwise I would have heard about it.

Q. And that is in addition to the 10-cents per case on the free running salt?

A. We do not get the additional 5-cents on the free running, that is separate.

Q. That is right.

1257 A. That is 10-cents.

Q. Yes.

A. And the other is 5-cents, it is not a cumulative proposition. It is not 10 and 5; it is 10 on one and then 5 on the other.

Q. That is, 10-cents on the free running salt?

A. That is right.

Q. And 5-cents on all other grades of salt?

A. That is right.

Q. Does your company do any promotional—

A. Let me correct for the record, that is packaged salt, and not bulk salt. I want to get the record straight on that.

Q. That is on packaged salt?

A. Yes, sir.

Q. Used in connection with what is known in the trade as table salt, is that it?

A. That is correct, regular packaged table salt.

Q. Would you receive that on ice cream salt?

A. I wouldn't want to make a statement on that. I would have to refer to the records, but my memory is that we do not get it. I wouldn't want to make a definite statement on individual items like that, unless I refer specifically to the records.

Q. You are now referring to the 5-cent discount?

1258 A. I am referring to the 5-cent discount on the regular 36 one and one-half pound packages, as we refer to them in the grocery trade.

Q. And that is the flat package with crystal salt, or Kleer salt?

A. That is right, the regular flat package, one and one-half pounds of salt to the package.

Q. Is that what is known in the trade as 5-cent salt?

A. It is generally referred to as 5-cent package salt throughout the years.

Q. Does your company do any promotional work in connection with the resale of Morton's round package and free running salt for the Morton Salt Company?

A. Yes, we advertise the salt. We keep it on constant display in super markets. We treat that as one of our important items, realizing that the name is well known as Morton's salt, and has a direct bearing on consumer acceptance, and one that we watch pretty close.

Q. What type of promotional work is done by your company in connection with the resale of Morton's round package free running salt?

A. I don't know exactly what you mean by that, other than as I stated before, other than we would do in the normal operation of the grocery business, on which we have

1259 an item which is valuable to the sales to the public, and one which we like to sell. Just a general merchandise program through the medium of displays, through the medium of advertising to the stores in just a general grocery setup.

Q. Does Morton Salt Company pay your company any compensation for such services?

A. I stated in the beginning that I believe we get 10-cents a case.

Q. Well, that is on a quantity basis, isn't it, sir?

A. Yes, if there is anything beyond that, any specific thing, I could refer to the records and report later to you, but I wouldn't want to say offhand that we had or had not received any, but to the best of my knowledge and belief I will state it this way: For the record, we do not receive anything additional for those services, although there could be a possibility through some promotion of some kind, but a record of our books will reveal whether or not we have, and I will have to call for the records on that.

Mr. Haslett: Mr. Reporter, will you mark this document as Commission's exhibit for identification No. 112?

(The document referred to was marked "Commission's Exhibit 112" for identification.)

By Mr. Haslett:

Q. Mr. Dodd, I hand you what has been marked for identification as Commission's exhibit 112, and ask you to describe it, if you will, sir.

1260 A. Allow me one moment to refresh my memory on this. This is a credit memorandum from the Morton Salt Company under date of October 30th, their number 70780.

Q. Is there a year date, sir?

A. October 30, 1941, pardon me, No. 70780.

Q. And is it directed to the Colonial Stores?

A. To the Colonial Stores, Inc., Atlanta, Georgia.

Mr. Haslett: I offer the document in evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be admitted in evidence and marked by the reporter as Commission's exhibit 112.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 112" was received in evidence.)

By Mr. Haslett:

Q. I hand you now Commission's exhibit No. 112, and ask you to state whether or not the 5-cent per case allow-

ance as shown thereon was in addition to the unit discount of approximately 5-cents received by your company on its purchases of White Crystal salt from the Morton Salt Company?

Mr. McBride: If the Examiner please, I would like to have that question read back to me.

Trial Examiner Purcell: Read the question back,
1261 Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: There is one thing I would like to see here. This refers to—

Trial Examiner Purcell: Mr. Dodd, can you answer the question of counsel?

The Witness: Well, I don't know whether I exactly understand it, and I want to understand it, so it will be perfectly clear. It would be easier to give you an answer, but I have something in mind I think probably would clarify it. I do not want to make a statement that would be misunderstood one way or another.

Trial Examiner Purcell: Being on the stand, we do not wish to make a voluntary statement. If you can't answer counsel's question, please say so, and he may then put it in some other form and give you an opportunity then to explain it.

The Witness: I would prefer that you put it in some other form, if you possibly can.

By Mr. Haslett:

Q. Mr. Dodd, you testified that in addition to the 10-cents per case allowance that you receive on Morton's free running salt, that you receive a 5-cent unit discount on table salt from the Morton Salt Company, based upon the fact that you purchase in excess of $50,000 worth of
1262 salt from various sources of supply, and I am asking you now whether or not the discount of the credit memorandum represents an additional allowance from the Morton Salt Company over and above the unit discount of 5-cents based on the $50,000 purchases of table salt from various sources of supply?

A. This is in addition to the other, on this particular invoice.

Q. I see.

A. I just wanted to be positive on that.

Q. So, on some of your purchases from the Morton Salt

Company, you receive, in addition to the 5-cent unit discount on the flat package salt, an additional 5-cent discount, as represented by Commission's exhibit 112, is that correct, sir?

A. As stated there, to meet a competitive situation, that is true.

Q. What do you mean by "to meet a competitive situation"?

A. I believe, on the face of the document itself, it is stated exactly what it is: "Temporary adjustment due to competitive conditions," referring to invoice No. 77308, dated October 30, 1941, covering shipment to Tallahassee, Florida, 500 cartons of 36/one pound eight ounce White Crystal salt at 5-cent credit. As stated in the document, it is a competitive situation.

Q. And I again repeat, what do you mean by a
1263 "competitive situation"?

A. That particular situation, I would have to refer to the records and consult that invoice to see just what the date was, and the manner of competition.

Q. What is the competitive situation generally?

A. I think if you will allow me a minute, I can give you an explanation off the record, and then if you want me to, I will restate it. I think I can give you an idea. Salt is a very, very competitive situation. Numbers and numbers of salt companies constantly, and have been through the years—

Mr. McBride: Mr. Examiner, I am afraid I will have to object to this sort of a statement in answer to Mr. Haslett's question. There is no objection to the witness answering the question as placed, but I don't believe that I can allow without an objection any sort of a full statement on the salt business at this juncture.

Trial Examiner Purcell: I don't think counsel's question called for that, did it, Mr. Haslett?

Mr. Haslett: Well, I asked him what he meant by generally a competitive situation, and now he is answering what he means by generally a competitive situation.

Trial Examiner Purcell: Will you confine yourself strictly to the question of counsel without going into a discourse on the background of the salt business, unless it is germane to your necessary description of the
1264 question, which is, what is a competitive condition.

The Witness: Frankly, I consider it necessary to

go into the background, which is the reason I did in the beginning, but I will make it as brief as possible.

If, as indicated by this document, there was a competitive situation, and it was necessary to meet it there from a standpoint in this particular place, I would have to refer to the records to be more specific, that would bring out this particular credit as being a competitive situation, as stated. I am not in a position to refer back to that information to a given place and tell you offhand what the competitive situation was, except through the records.

By Mr. Haslett:

Q. But you still don't answer my question, Mr. Dodd.

A. I am trying to, to the best of my ability.

Q. What do you mean by a competitive situation? Is that where one is selling salt at a lower price or a higher price?

A. Yes, sir.

Q. Well, explain that, please.

Mr. McBride: If the Examiner please, I think I will have to object to that question, for this additional reason: I believe counsel is interrogating this witness about the description of a particular exhibit, which description apparently was not placed on the exhibit by this witness or anybody in his company, and I don't know under what
1265 guise this witness can interpret or state what is meant by the wording on an exhibit prepared by someone other than himself, or by some company other than his company.

Trial Examiner Purcell: It is a statement appearing on the exhibit made by your client, is it not?

Mr. McBride: True, but how can this witness interpret what we might mean by a statement on one of our papers?

Trial Examiner Purcell: Yes, you have made yourself clear, sir. The Examiner understands the situation. On the other hand, Mr. Haslett's question is not directed to the particular exhibit, but is a question generally as to what is meant by competitive conditions. Is that what it is, is that correct, Mr. Haslett?

Mr. Haslett: That is correct.

Trial Examiner Purcell: Your objection is overruled, sir. You may answer.

The Witness: General competitive conditions is where someone else is selling at a less price, and they felt necessary to meet that price.

By Mr. Haslett:

Q. Who felt necessary to meet it?

A. The Morton Salt Company.

Q. Why did they meet it?

Mr. McBride: I object to that, if the Examiner
1266 please. This witness cannot testify as to why the Morton Salt Company does anything. I think the question is entirely out of order with respect to this witness.

Mr. Haslett: I will withdraw my question, Mr. Examiner. I think the objection is well taken.

By Mr. Haslett:

Q. When your company receives from the Morton Salt Company a credit memorandum similar to Commission's exhibit 112, is the amount shown on the memorandum deducted from the invoice price of the salt, and the number shown thereon, or is it deducted from the general accounts payable to the Morton Salt Company?

A. It is deducted from anything that we might owe the Morton Salt Company from the time we have the credit memorandum in hand.

Q. And all temporary adjustments due to competitive conditions that your company receives in the form of credit memorandums from the Morton Salt Company, are over and above any discount or allowances or rebates your company receives upon its purchases from the Morton Salt Company?

A. They are.

Trial Examiner Purcell: I should like to have that question re-read.

(The record was read by the reporter.)

By Mr. Haslett:

1267 Q. I again hand you Commission's exhibit No. 111, and ask you to state whether this document is typical of invoices received by your company from the Morton Salt Company upon its purchases of Morton's iodized salt, and free running salt and Crystal table salt?

A. This is a typical invoice at the time it was issued.

Q. How long has your company been purchasing from the Morton Salt Company?

A. I cannot tell you. It has been a long time. I wouldn't want to say how many years.

Q. It has been a long, long time?

A. Yes, sir.

Q. Do you know how long your company has been receiving the discount on the free running and iodized salt?

A. I couldn't tell you exactly when that started, unless I referred to the records.

Q. Has it been a long time?

A. It has been quite some time. I can't tell you.

Mr. McBride: I object to that question, if the Examiner please. A long time is too indefinite, in view of the witness' answer.

By Mr. Haslett:

Q. Has it been several years?

A. Now, I want to answer this correctly. We have been receiving the 10-cents a case advertising allowance on
1268 the 26 ounce rounds ever since it has been in this market, to the best of my knowledge and belief. We have handled it from the beginning.

Trial Examiner Purcell: And how many years has that been, sir, approximately?

The Witness: I would say it has been approximately five years.

By Mr. Haslett:

Q. Commission's exhibit No. 112 is typical of credit memorandums received from the Morton Salt Company by Colonial Stores, Inc., showing a temporary adjustment due on White Crystal salt?

Mr. McBride: I object to that, if the Examiner please. This witness has already testified he has no knowledge of the conditions, the circumstances or anything else under which that particular credit memorandum was issued. He could have knowledge only by referring to his records, and I object to any question of counsel now as to whether that is typical of anything.

Trial Examiner Purcell: The objection is overruled, for this reason, Mr. McBride: That particular transaction may have been one of many similar transactions, all governed by the same usual method of doing business between the parties, and the question is directed as to whether or not this is a typical transaction.

1269 Mr. McBride: Let us assume the possibility that what the Examiner states is true, without conceding that it is true. The fact still remains that this witness has already testified that he can't identify the event in his

mind with respect to which this credit memorandum was issued. That being true, I object to any question which relates to this in terms of being typical of anything, unless and until this witness identifies the circumstances, which he states he can't do, which he has stated he couldn't do.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Mr. McBride: May we have a recess for a moment, Mr. Examiner?

Trial Examiner Purcell: Yes, a five minute recess, gentlemen.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over, please come to order.

Mr. Haslett: Mr. Examiner, I have no further questions of this witness, and I will turn him over for cross-examination.

Trial Examiner Purcell: You may cross-examine sir.

Mr. McBride: I don't believe I have any questions, 1270 Mr. Examiner.

Trial Examiner Purcell: Is the witness excused?

Mr. Haslett: Yes, sir. Thank you very much, Mr. Dodd, for coming down.

(Witness excused.)

Mr. Haslett: Mr. Examiner, I would like for the record to show that Mr. J. C. Dyson has been subpoenaed as a witness for the Commission and has been excused, and I would like for the Examiner to make out his witness voucher.

Mr. Examiner, in regard to Mr. Dodd's testimony, and having particular reference to the last question relative to Commission's Exhibit 112, being a typical credit memorandum received from the Morton Salt Company on temporary adjustment due to competitive conditions, I will not at this time force that question, and will withdraw it.

Trial Examiner Purcell: Let the record so show.

Mr. Haslett: Mr. Examiner, I will call as the Commission's next witness, Mr. George Alterman.

GEORGE ALTERMAN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Your name is Mr. George Alterman?

1271 A. Yes, sir.

Q. (Spelling) A-l-t-e-r-m-a-n?

A. Yes, sir.

Q. And do you reside in Atlanta, Georgia, sir?

A. Yes, sir.

Q. And in what business are you engaged, sir?

A. Wholesale grocery business.

Q. And how long have you been in the wholesale grocery business?

A. Twenty years.

Q. Twenty years?

A. That is right.

Q. And with what firm are you connected, sir?

A. The Alterman Brothers.

Q. And is that a corporation, sir?

A. No, sir, a partnership.

Q. And are you a partner in that firm?

A. Yes, sir.

Q. How long have you been connected with the Alterman Brothers?

A. Fifteen years.

Q. And what are your duties with the concern?

A. General manager.

Q. Do you, in the course of your duties, place orders for various commodities?

1272 A. Yes, sir.

Q. What is the business of the Alterman Brothers?

A. Wholesale groceries.

Q. And it sells groceries and allied products to retailer stores?

A. Yes, we sell to the retailers, and also supply super markets.

Q. Have you any retail stores associated with your company?

A. Yes, we supply the Big Apple Super Markets.

Q. Are they owned or controlled by the Alterman Brothers?

A. Yes, we control them.

Q. And what are the Big Apple Stores, sir?

A. Super markets, handling groceries and meats and vegetables.

Q. And selling those to the consuming public?

A. Yes.

Q. And how many super markets do you operate, sir?

A. Six.

Q. And are all of them within the city of Atlanta, Georgia?

A. No, we have them over the state, and one in Alabama.

Q. In what cities are they located?

A. West Point and Covington, Georgia, and Opelika, Alabama.

Q. In addition to Atlanta?

A. Three in Atlanta.

Q. Have you any competitors, sir?

1273 A. Yes, we have some competitors.

Q. Would you name some of your competitors in the wholesale line?

A. Well, E. Lichenstein Company, H. L. Singer Company, Quality Service Stores, Joe Seitz.

Q. Do you have in addition to those, some retail competitors?

A. Yes, we think we have, A&P Super Markets, along with Colonial Stores, Big Star Stores.

Q. In addition to those, you have a number of independently owned retail stores as competitors?

A. We don't own any independent stores.

Q. No, I mean, your competitors are independently owned retail stores, corner grocery stores?

A. Yes, they are competitors.

Q. Does your company purchase or handle salt?

A. Yes.

Q. Does it purchase from the Morton Salt Company?

A. Yes.

Q. And what type of salt does your company purchase from Morton Salt Company?

A. We handle the round package free running and iodized salt.

Q. Do you handle any other type of salt from the Morton Salt Company?

1274 A. Occasionally we have brought in bulk salt and ice cream salt, four pound packages.

Q. What is the price that your company pays the Morton Salt Company for its round package free running salt per case?

A. $1.50 net.

Q. And what is the price that it sells it per package sir?

A. $1.65 is the average price.

Q. And what is the price that it sells at per package to the consuming public for, sir, through its Big Apple Stores?

A. 7½ cents.

Q. Per package?

A. Yes, sir.

Q. How are orders placed by your company with the Morton Salt Company for its requirements of salt?

A. We give orders to Morton Salt Company's representative, who calls on us at regular intervals to take orders.

Q. And as a result of which. commodities are shipped to you by the Morton Salt Company?

A. Shipped in pool cars to the broker and our trucks pick them up at the broker's warehouse.

Q. And your trucks haul them to your warehouse?

A. Yes, sir.

Q. And does your company receive any discounts
1275 or allowances of any kind from the Morton Salt Company?

A. No.

Q. It does not receive any, sir?

A. No.

Q. Do you know approximately the number of cases of Morton's round package free running and iodized salt that your company purchased from the Morton Salt Company during the year 1940?

A. Approximately 1,000 cases.

Q. And for the year 1941?

A. The same.

Q. Approximately 1,000 cases?

A. Yes, sir.

Q. It has been about the same for both years?

A. Yes, sir.

Q. Does your company do any purchasing from the Morton Salt Company on a carload basis?

A. No, sir.

Q. It does not?

A. No.

Q. Is the price at which your company pays for its products an important factor in your business?

A. Very important.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price your company sells its salt products at?

1276 A. Yes, sir.

Q. What effect would it have upon your business if one of your competitors, one of your wholesale competitors, was selling salt at a 2-cent differential in price under the price at which you were selling salt of the same grade and quality?

A. He would get the business.

Q. Would you be forced to meet that price?

A. Yes, we would meet it.

Q. And if you didn't meet it, you wouldn't get the business, is that it?

A. Yes.

Q. Is your business in any way affected by the fact that one of your competitors pays $1.40 for Morton's free running salt, while at the same time you pay $1.50 a case for the salt of the same grade, type and quality?

A. Yes, sir.

Mr. McBride: I object to that, Mr. Examiner, for my usual reasons.

Trial Examiner Purcell: Objections overruled. You may answer.

The Witness: Yes.

By Mr. Haslett:

Q. And would that also be true if he were paying $1.35 a case for it, while at the same time you were paying

1277 $1.50 a case for it?

Mr. McBride: Same objection.

Trial Examiner Purcell: Same ruling.

By Mr. Haslett:

Q. It would be an adverse effect?

A. Yes.

Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's Exhibit No. 52, except as to the quality of the product, date, number of the invoice, consignee and destination,

have passed between the respondent, Morton Salt Company, and Alterman Brothers of Atlanta, Georgia, who is a customer of the respondent, Morton Salt Company, and that said Commission's Exhibit No. 52 is typical of such invoices for the sale of salt of the same type that appears thereon that passed between the respondent herein and its customer, Alterman Brothers of Atlanta, Georgia, and that such invoices have in the regular course of the respondent's business passed between the respondent and its said customer, Alterman Brothers of Atlanta, Georgia, since the respondent began the sale of, and the said customer, Alterman Brothers of Atlanta, began the purchase of the type of products as appears on Commission's Exhibit No. 52.

1278 Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. Does your company in its retail stores do any promotional or advertising work in connection with the resale of Morton's round package salt to the consuming public?

A. None other than floor displays or shelf packages.

Q. Does the Morton Salt Company pay you for that service?

A. No, sir.

Q. Did you know prior to the time that I told you that the Morton Salt Company was giving a 10-cent discount on Morton's round package free running salt on a quantity purchase?

A. Yes, we were familiar with that.

Q. Have you had occasion to discuss that matter with any representative of the Morton Salt Company?

A. Yes, we have discussed it from time to time.

Q. Who did you discuss it with, sir?

A. We discussed it with Mr. Walker, their local representative.

Q. I see, and did you ask that that discount be made available to you?

A. Yes.

Q. And was that refused?

A. Yes, sir.

Q. Did he state the reason why it was refused?

A. They explained that you had to buy a certain
1279 quantity to get this particular rebate, that we weren't able to buy, and we brought up the fact that a competitor of ours was getting it who wasn't using any more

salt than we. They explained that this competitor was buying through the NROG. We, in argument, explained that we were members of the Biddle Purchasing Company, who was also a national buying unit, and they advised us that Biddle wasn't affiliated or in a position to handle it, not that they couldn't buy their stipulated quantity to get it, but they just didn't have that setup through Biddle.

Q. And what is the name of that competitor, sir?

A. Quality Service Stores.

Q. And are they located here in Atlanta?

A. Yes.

Q. And do they sell Morton's round package salt in competition with your stores direct to the consuming public?

A. Yes.

Q. How long have you been purchasing from the Morton Salt Company, if you know, sir?

A. Since my association with the company, 15 years ago.

Q. And you have been buying the same type of salt?

A. Yes.

Q. Do you purchase any Kleer salt, or White Crystal salt from the Morton Salt Company?

A. No, we have never handled those, that I recall.

1280 We brought in one small shipment of Silvert salt at one time.

Q. The only table salt that you purchase from the Morton Salt Company is the round package blue label salt, is that correct, sir?

A. We have bought ice cream and bulk.

Q. Well, that is not a table salt, is it, sir?

A. The bulk salt would be table salt, I think.

Q. You say you have purchased bulk salt from the Morton Salt Company?

A. Yes, sir.

Q. Did you receive any discount on that, sir?

A. No, sir.

Q. Would your business be in any way affected by the fact that one of your competitors was getting a unit discount of 5-cents off the bulk salt, while at the same time you weren't getting any discount at all from the Morton Salt Company?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Yes.

By Mr. Haslett:

Q. I believe you stated the price of the round package salt in your Big Apple retail stores was 7½-cents per package?

A. Yes.

1281 Q. Is that the price that is prevailing at the present time?

A. To the best of my knowledge. I wouldn't be certain of that, because I don't devote much of my time to that division.

Q. I see, but to the best of your knowledge, it is in existence at the present time?

A. Yes, sir.

Q. And has been for a long time, or a short time, sir?

A. I think that is a little cheaper than what it was. We did have an 8-cent price on Morton's salt.

Q. Why did you lower it from 8 to 7½-cents, sir?

A. I wouldn't know.

Mr. Haslett: I think that is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Alterman, I believe you stated that your company purchased approximately 1,000 cases of blue package in 1940, and approximately the same amount in 1941, is that correct?

A. Yes, sir.

Q. Now, going back of 1940, was that approximately your rate of annual purchases of the blue package for 1937, 1938 and 1939?

A. I don't know.

1282 Q. You have only a recollection as to the years 1940, and 1941, is that correct?

A. No, I checked those years.

Q. Now, your price of $1.65 to the wholesale business, has that price been in effect for a considerable number of years, so nearly as you can recall?

A. Yes.

Q. Four years or five years?

A. Yes, sir.

Q. Do you know, Mr. Aterman, the names of any of the retail grocers here in Atlanta who are members of—I believe you identified them as the NROG unit here?

A. Yes, sir.

Q. Do you know whether M. J. Clark's retail grocery on Stewart Avenue in Atlanta, whether or not that is a member of the NROG group?

A. What was that name again?

Q. M. J. Clark.

A. I don't think he is.

Q. Do you know what Mr. Clark sells his salt for, Morton's blue package?

A. No, sir.

Q. You don't know whether he sells it for 10-cents or 9-cents, or what he sell it for?

A. No, sir.

1283 Q. Do you know whether or not Mr. G. E. Harris' retail grocery on East Point Street in Atlanta, is a member of the NROG group?

A. Yes, he is a member.

Q. Mr. Harris sells his blue package salt at 9-cents per package, is that correct?

A. I don't know.

Q. Do you know whether or not Hansard's Market, located on Hateville Street in Atlanta, is a member of the NROG group?

A. I don't know.

Q. Do you know what that market sells Morton's blue package for?

A. No, sir.

Q. It could be 10-cents or 9-cents. You don't know what the price is?

A. It could be.

Q. Do you know of Mr. J. H. Croley's store on College Park, in Atlanta, whether or not that is a member of the NROG group?

A. Yes, he is a member.

Q. Do you know what he sells his Morton's blue package for?

A. No.

Trial Examiner Purcell: Mr. McBride, do you feel
1284 that is really necessary, to go through a whole list of them?

Mr. McBride: It is, if the Examiner please.

Trial Examiner Purcell: You may proceed.

By Mr. McBride:

Q. So that if he were selling it for 10-cents a package, you wouldn't know of your own knowledge.

A. No, sir.

Q. Do you know whether or not the Bierman Grocery Company, on Sixth Street in Atlanta, is a member of the NROG group?

A. Yes.

Q. Do you know whether or not he is selling it at 10-cents a package, or what price he is selling it at?

A. I don't know.

Q. And Green's Grocery in Atlanta, at Highland and Amsterdam Streets, do you know whether that is a member of the NROG?

A. Yes, he is a member.

Q. Do you know the price they are selling Morton's blue package for at that store?

A. No.

Q. I believe you stated, Mr. Alterman, that you—

Mr. Haslett: (Interrupting.) Are you through with that line of testimony.

Mr. McBride: Yes, I am.

1285 Mr. Haslett: I make a motion to strike it as not being responsive, not in the purview of this witness' knowledge as to who is a member of the NROG. He is not a member of the NROG, and unless he actually gets into stores, and knows the prices, he cannot testify as to those prices.

Mr. McBride: If the Examiner please, in support of the line of questioning that I have just finished, this witness testified to statements made by him with respect to his alleged competition with the NROG and members of that group. I think it is perfectly within the scope of cross-examination to demonstrate that this witness is not at all familiar with the competitive situation between the Big Apple Stores and the NROG group, and I am entitled to discount his testimony with respect to the competitive picture.

Trial Examiner Purcell: Objection is overruled, and the motion to strike is denied.

Mr. McBride: Would that be objection sustained to me, and Mr. Haslett's motion to strike denied?

Trial Examiner Purcell: Objection overruled. I over-

ruled Mr. Haslett's objection to your question and denied his motion to strike. Is that clear, Mr. McBride?

Mr. McBride: Yes, it is, thank you.

By Mr. McBride:

Q. I believe you stated, also, Mr. Alterman, that you did not devote any particular portion of your time to the
1286 retail outlets known as the Big Apple Stores. Am I correct in my recollection on that?

A. You are correct.

Q. In other words, your duties are confined primarily to the wholesale business of the Alterman Brothers?

A. Yes, sir.

Q. And by virtue of that fact, you are not particularly familiar with the merchandising schemes and programs and necessities of the Big Apple Stores, is that right?

A. I have a general idea, and follow through more or less as an outsider with the privileges of an insider.

Q. You have a 7½-cent retail price, I believe you testified, at the present time?

A. Yes, sir.

Q Do you know of anybody in the city of Atlanta that is selling for less than 7½-cents?

A. No, sir.

Q. So that when you stated that possibly a one-cent differential per package on Morton's blue can might affect the business of the Big Apple Stores, that was simply a theoretical statement on your part, is that correct?

Mr. Haslett: I object to that question, Mr. Examiner.

Trial Examiner Purcell: Upon what grounds?

Mr. Haslett: On the ground that that question
1287 when asked was directed as to what effect it would have on his business if such did happen. It is not upon any theoretical basis. It may develop that such did happen.

Trial Examiner Purcell: Well, until it actually does so develop, it is in a theoretical state, is it not? I will overrule the objection.

The Witness: No.

By Mr. McBride:

Q. I think you stated further, Mr. Alterman, that you regarded bulk salt as table salt. Am I correct in my recollection on that?

A. Yes.

Q. Now, will you describe what sort of bulk salt you mean when you describe it as table salt?

A. We bring in an item called 14/10's. Now, I know that we sell 14/10's to the hotels and restaurants downtown, and I assume that they use that for table salt.

Q. So that is what you meant when you said bulk salt was sometimes table salt, you were referring to that particular item?

A. Yes.

Q. It may well be that the hotels use it for some purposes other than table salt, however, as far as you know?

A. Yes.

Q. Could you state, Mr. Alterman, approximately
1288 how many grocery items Alterman Brothers carry?

A. 2,000 or more.

Q. 2,000 or more?

A. Yes, sir.

Q. Of those items, how many salt items does Alterman Brothers carry?

A. Approximately six.

Q. So that the number of salt items that your company carries are less than half of one per cent of the total commodities that you offer for sale, is that right?

A. It is less than that number of commodities, but in volume it would be more than one-half of one per cent.

Q. I am referring now only to the number of commodities.

A. You are right.

Q. With respect to your dollar volume, your total dollar volume for all commodities for the year 1941, as an example, would the dollar volume of your salt business account for more than half of one per cent of that dollar volume?

A. Yes, sir.

Q. About how much would it account for?

A. It would account for 5 per cent or better.

Q. Five per cent?

A. Yes.

Q. Isn't salt one of the cheapest commodities that you handle in comparison to canned goods, sugar, and so forth?

1289 A. Yes, sir.

Q. Nevertheless, you still think that the salt commodities alone would amount to five per cent?

A. Yes.

Q. Now, you purchase, as I understand, primarily, from the Salt Company, only the blue package, with the few exceptions that you mentioned?

A. That is right.

Q. Now, of the total items that you have, then, in the salt line, only one of the six items is a Morton Salt Company product, isn't that correct, with those few exceptions?

A. Right.

Q. Now, on terms of dollar volume of your salt bsiness, would the Morton Salt Company dollar volume account for more than a very small fraction of the five per cent?

Mr. Haslett: I assume, Mr. Examiner, I have an objection to all of this line of testimony, based upon my previous presentation?

Trial Examiner Purcell: Yes, sir.

The Witness: It would be about 25 per cent of the amount of salt we used, I would say.

By Mr. McBride:

Q. In other words, about a fourth of the five per cent?

A. That is right.

1290 Q. How many salesmen does your company employ for the promotion of its wholesale business, Mr. Alterman?

A. Eight.

Q. Eight, and they cover how large a territory?

A. A hundred miles.

Q. About 100 mile radius of Atlanta?

A. Yes.

Q. I am referring only to the wholesale grocery business, now, you understand?

A. Yes, sir.

Q. And these eight salesmen offer the entire line of commodities, 2,000-plus items that you referred to a moment ago?

A. Yes.

Q. Does your company at all times offer all of the commodities, including salt, at the lowest price, wholesale price for which those commodities are offered in the Atlanta market?

A. No.

Q. In other words, you may be high on some items and low on some items at the same time?

A. That is right.

Q. That would be true with your salt items, as well as with your general commodity items, is that right?

A. Yes.

1291 Q. Does the mere fact that you may be high on some items and low on other items mean that your general dollar volume is necessarily adversely affected during the course of a year?

Mr. Haslett: I object to that.

Mr. McBride: I will withdraw the question, Mr. Examiner.

By Mr. McBride:

Q. It is very often true, is it not, Mr. Alterman, that in the course of retail business, so far as you are acquainted with it, that certain commodities, salt included, are offered for a daily or a week-end special?

A. Yes, sir.

Q. And it is also true in the wholesale business, is it not, that various commodities, perhaps from time to time salt, is likewise offered as specials by wholesalers in order to gather additional retail business?

A. Yes.

Q. And that is done, is it not, in a rather wide variety of products, as the various wholesalers see fit to make their selection of specials, isn't that right?

A. Yes.

Q. Now, you named the number of competitors in the Atlanta area. When you observe that a wholesaler is offering a special item, such as we have just described,

1292 either salt or canned goods or potatoes, do you in all cases immediately drop your prices on those commodities to meet it, when you recognize it as a special item?

A. We meet competition.

Q. Referring again to my question, do you endeavor at all times to meet all special prices on all commodities, including salt, that are offered by all of your competitors in Atlanta?

A. Not all items.

Q. In other words, you adjust your whole line of prices on all commodities, including salt, in a manner to keep your volume with the retail trade up, is that right?

A. Yes.

Q. Now, if one of your competitors is selling, we will say, Morton's blue package salt at $1.65 to the wholesale trade, which is the same price at which you offer Morton's blue package to the wholesale trade, you are competitively equal with that competitor, are you not?

A. Yes.

Q. And if that same competitor were to offer it at, say, $1.70, you presumably would be in a very favorable position on that same item?

A. Yes.

Q. And you pretty muchly judge the way, and range your prices on salt and allied commodities by the prices at which those commodities, including salt, are offered
1293 to the wholesale trade in your wholesale business?

A. We have a mark-up above cost, that we fix our prices by, and they are controlled by competitive conditions.

Q. In other words, as a general merchandising scheme, you place certain mark-ups on all of your commodities?

A. Yes.

Q. And actually it is true, is it not, Mr. Alterman, that so long as the prices are the same for offering to the wholesale trade, what your competitors may pay for the particular item, be it potatoes, canned goods or salt, does not impair your business, is that correct?

A. There is an exception to that.

Q. How is that?

A. There is an exception to that.

Q. Well, you state the exception. I am not sure that I understand your answer, in light of the question.

A. Well, we can't meet the Quality Service Stores' price of $1.53 on Morton's salt, when it is costing us $1.50.

Mr. McBride: If the Examiner please, I will have to ask that that answer be stricken, because it is unresponsive to my question. I was wanting to give the witness an opportunity to see whether his answer would be responsive.

Mr. Haslett: Mr. Examiner, I think the answer is responsive, because he gave the witness an opportunity to state what the exception was. He asked what the
1294 exception was and he told him what the exception was. Now, if it is not the answer that counsel wants, that is too bad.

Mr. McBride: Then, I will renew my question.

By Mr. McBride:

Q. If a competitor of yours offer salt at $1.65, which you say is your offering price, is it immaterial from your standpoint, what that competitor may pay for the salt, so long as it is offered for the same price, is that correct?

A. Yes.

Q. Do you know the name of the wholesaling unit under the NROG group here in Atlanta?

A. Yes, sir.

Q. What is the name of that?

A. Atlanta Savings Stores, advertising as Quality Service Stores.

Q. Does the Atlanta Savings Stores, so far as you know, offer products, including Morton's blue can, to any retailer other than the members of its own group?

A. Indirectly, they do.

Q. What do you mean by "indirectly"?

A. Well, I know of cases where a member will buy the commodity for his brother-in-law who isn't a member, or a good friend who isn't a member.

Q. But, the policy, so far as you know, is to confine the offering to the retail members of the NROG group, 1295 is that correct?

A. That is correct.

Q. So far as you know?

A. That is right.

Q. Now, isn't it a fact, Mr. Alterman, that the price to members by the Atlanta Savings Stores here in Atlanta is $1.55 a case on Morton's blue package?

A. You might be right.

Q. In other words, you are not certain what the price is?

A. I am under the impression it is $1.53.

Q. You don't know that for certain, is that correct?

A. No, not for certain.

Q. In other words, you are not connected with the Atlanta Savings Stores, and you only know it by—

A. Competitive situation.

Q. —as word leaks around, shall we say, by the wholesalers' grapevine, is that correct?

A. No, we have seen their bulletin that they put out annually, naming the price.

Q. In the type of wholesaling business which you offer, Mr. Alterman, you include among the services rendered a

delivery service to the retailer, and you offer them credit, as well, isn't that correct?

A. Yes, sir.

Q. So that in making your price, you necessarily
1296 include as a factor the two elements of credit risk and delivery cost, isn't that correct?

A. Yes.

Q. It is true, is it not, that with respect to the Atlanta Savings Stores, which you have just identified as the NROG member in Atlanta, that retailers must come and call at the warehouse for all of their goods, including salt, isn't that correct?

A. That is not correct.

Q. They deliver, do they?

A. Yes, sir.

Q. Are you sure of that?

A. Positive.

Q. To all retailers?

A. All retailers who are members, who are in the Atlanta territory, going outside of Greater Atlanta, also.

Q. Do you know whether the price is different when delivery is made to a retailer member of the NROG than it is if the retailer calls for it?

Mr. Haslett: I object to that, Mr. Examiner, unless this witness can testify as to his own knowledge what the prices are of NROG.

Mr. McBride: The witness has undertaken to identify his knowledge of NROG prices here in Atlanta.

Trial Examiner Purcell: A few minutes ago you
1297 made the same objection to this witness' testimony for the same reason that Mr. Haslett is now making his.

Mr. McBride: I don't recall any such objection. Maybe my memory is short-lived, Mr. Examiner, but I don't even recall it.

Trial Examiner Purcell: I think Mr. Haslett's objection is well taken. I will sustain it.

Mr. McBride: I believe that is all, Mr. Alterman.

Redirect Examination by Mr. Haslett.

Q. Mr. Alterman, have you ever seen the price list of NROG's prices at which they sell commodities to its members?

A. Yes, sir.

Q. Have you ever seen the price of $1.53 appearing thereon for Morton's round package blue label free running and iodized salt per case?

Mr. McBride: If the Examiner please, I will have to make my objection to that, because I take it we are referring to a document of some sort, which is not before the Examiner. The document will have to speak for itself.

Mr. Haslett: I think the witness has cleared the matter up pretty nicely.

Mr. McBride: I didn't hear his answer.

Mr. Haslett: He didn't answer the last question.

Trial Examiner Purcell: Off the record.

1298 (A discussion was had off the record.)

Trial Examiner Purcell: Back on the record. The objection of counsel is sustained.

By Mr. Haslett:

Q. Do you of your own knowledge know the price at which NROG is selling Morton's round package blue label salt to its members?

Mr. McBride: Mr. Examiner, am I in the position now of returning the compliment of Mr. Haslett's objection from this witness' knowledge?

By Mr. Haslett:

Q. I said, do you of your own knowledge know? You can answer yes or no, that is all it asks for.

A. No.

Mr. McBride: I shan't press my objection, Mr. Examiner.

Trial Examiner Purcell: It is just as well, sir.

By Mr. Haslett:

Q. Do you know whether or not the price at which NROG was quoting to its retailer members was below the price that you were quoting to your retailer customers?

Mr. McBride: Now, if the Examiner please, I will have to object to that, in light of the witness' answer to the previous question. He did not know what NROG's price was, and I, therefore, object to the question stated

1299 in relative terms.

The Witness: I know the answer to that.

Trial Examiner Purcell: Just one moment, please, sir. What have you to say to that, Mr. Haslett?

Mr. Haslett: Mr. Examiner, if you will read the questions, you will see they are entirely different. Mr. McBride is absolutely wrong in his last statement.

I will ask the reporter to read the former question and this last question.

(The questions referred to were read by the reporter.)

Trial Examiner Purcell: Off the record here.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record. The objection of counsel is overruled. You may inquire, Mr. Haslett.

Mr. Haslett: Read the last question to the witness again, Mr. Reporter.

(The question referred to was re-read by the reporter.)

The Witness: Yes, I know that it was lower than our quotation and selling price.

By Mr. Haslett:

Q. Does NROG's warehouse sell to any of your customers?

A. Yes. I might put it this way, we sell to some 1300 of their customers.

Q. You sell to some of the NROG members?

A. Yes, sir.

Q. And your price, I believe you stated, was $1.65 a case?

A. Yes.

Q. Your general price?

A. Yes.

Q. You stated in response to one of Mr. McBride's questions that if a competitor of yours was selling salt at $1.70 a case, while at the same time you were selling it at $1.60 a case, that you would be in a favorable position, is that correct, sir?

A. I didn't understand that question.

Q. I believe you stated in response to one of Mr. McBride's questions that if a competitor of yours was selling Morton's round package salt at $1.70 a case, while at the same time you were selling it at $1.65 a case, that you would be in a favorable position?

A. Yes, sir.

Q. And if a competitor was selling it at $1.60 a case, or $1.53 a case, and you were selling it at $1.65 a case, the competitor would be in a favorable position, is that true, sir?

A. Yes.

Q. And the difference between what he is selling it at, and what you were selling it at, would be an injury to your business, is that correct, sir?

1301

A. Yes.

Q. Now, the conversation that you had with one of Morton's representatives relative to the volume of business of NROG, could you state the name of the man that that conversation was held with?

A. Mr. Walker.

Q. Mr. Walker?

A. Yes.

Q. And did Mr. Walker tell you at that time the amount of salt that NROG was purchasing through its Quality Service Stores here in Atlanta?

A. No, sir.

Q. Did he say it was under your volume of purchases or over?

A. Approximately the same. This didn't come from Mr. Walker, but we know pretty well that our volume is on a parallel with Quality Stores.

Mr. McBride: I will ask that that answer be stricken as not responsive.

Trial Examiner Purcell: Mr. Haslett?

Mr. Haslett: Do you mean the last statement? "This didn't come from Mr. Walker," is that what you are objecting to?

1302

Mr. McBride: To the whole answer, because he identified it as not coming from Mr. Walker.

Mr. Haslett: I don't agree with you there. I think the answer is responsive, and if you will read it again, he said that Mr. Walker did so state to him.

Read the last question and answer, Mr. Reporter, please.

(The question and answer referred to was read by the reporter.)

By Mr. Haslett:

Q. What did you mean when you said, "this did not come from Mr. Walker"?

Mr. McBride: If the Examiner please,—

Trial Examiner Purcell: I will rule on the objection, Mr. Haslett.

Mr. Haslett: All right, sir.

Trial Examiner Purcell: Have you anything to say?

Mr. Haslett: No, sir.

Trial Examiner Purcell: I am going to sustain the objection.

Mr. Haslett: As to what part?

Trial Examiner Purcell: As to the entire answer to the previous question.

Mr. Haslett: Well, I will take an exception to the Examiner's ruling as to the entire question. I think
1303 the Examiner's position might be well taken as to the last part of the question, but not as to the first part of the question.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Now, back on the record.

Mr. Haslett: I will withdraw my exception to the Examiner's ruling. You have sustained the objection, is that correct, sir?

Trial Examiner Purcell: That is correct, yes.

By Mr. Haslett:

Q. Now, how did the information come to you in regard to the volume of business done by the NROG with the Morton Salt Company?

Mr. McBride: If the Examiner please, I don't know that we even have any basis here that he knows what the volume of NROG is. I am not trying to be technical, but we are jumping pretty far afield in these questions.

Mr. Haslett: I will withdraw that question, and ask this:

By Mr. Haslett:

Q? How did the information come to you as to the volume of business done by the Quality Service Stores in Atlanta, Georgia with the Morton Salt Company?

Mr. McBride: Same objection. He hasn't even
1304 testified yet whether he knew or didn't know what the volume was. I don't know how he can at this time inquire as to where he got what information.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

By Mr. Haslett:

Q. Mr. Witness, have you information as to the volume of business done by the Quality Service Stores, being a

member of the NROG in the Atlanta area, with the Morton Salt Company?

A. Yes.

Q. How did this information come to you, sir?

A. From Morton Salt Company's representative.

Q. Do you know the representative's name, of the Morton Salt Company, who gave you this information?

A. Yes, sir.

Q. What was his name?

A. Mr. Walker.

Q. And did Mr. Walker give you this information in your place of business?

A. Yes, sir.

Q. Approximately what time did he give this information to you?

A. Well,—

1305 Q. I am talking about the day in the year or the month, sir.

A. Oh, we have taken this matter up over a period of years with Mr. Walker, and I think we have taken it up with Mr. Campbell, also, about this situation on salt. We felt that we were entitled to it, and we have asked for it a number of times. We have offered to buy Morton salt in straight carloads to get it.

Q. Why did you want a discount from the Morton Salt Company?

A. To meet the Quality Service competition, or to set it up as an advertising allowance whereby we could offset this expense for newspaper advertising of Big Apple Stores.

Q. You wanted it so you could sell salt in competition with Quality Service Stores?

A. Yes.

Q. And to meet their prices?

A. Yes.

Q. You couldn't meet their prices and make a profit at the price that you were paying for the round package salt from the Morton Salt Company?

A. No.

Mr. McBride: I object to that question, as long as it involves the word "profit".

Mr. Haslett: I don't recede from my position in

1306 regard to the question, I will force the question.

Trial Examiner Purcell: Off the record here.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. Without at all being inconsistent in my former ruling on a similar question, and because of the different circumstances in which we now find ourselves, I am going to overrule your objection, Mr. McBride, and will allow you an exception.

Mr. McBride: Yes, I would want my reservation to show clearly on this, for reasons previously indicated.

Trial Examiner Purcell: You have it, sir.

By Mr. Haslett:

Q. And when I say "their", I mean Quality Service Stores.

A. Yes, sir.

Q. You stated that you had numerous conversations with a representative of the Morton Salt Company with regard to this practice of discounts?

A. Yes, sir.

Q. And did any representative of the Morton Salt Company ever advise you that your volume was comparable with that of Quality Service Stores on the purchase of round package and free running salt?

A. Yes.

Q. Now, Mr. McBride went into quite a bit of detail in regard to the percentage of the salt business as com-
1307 pared to other types of products sold by your company.

A. Yes.

Q. And you stated that they were less than one-half of one per cent, and various figures. Were those all guesses on your part?

Mr. McBride: If the Examiner please, I object. I will give as my reasons for my objection. The reason Mr. Haslett gave to my theoretical question to the witness. I simply asked the witness so nearly as he could recall, and he made his a statement.

By Mr. Haslett:

Q. They are estimates, is that it?

A. Yes, sir.

Q. Not based on any research on your part from the accounting records of your firm?

A. I would like to make this point clear concerning this question, if I may.

Q. All right.

A. In speaking of 2,000 items, you take an item like peas, we carry not less than 15, or I might say 25 items of peas. We start out with a No. 10, we come down to a No. 2, we come on down to No. 1, and then a nine ounce and an eight ounce can of peas. Then, going into brands, you have a nationally advertised brand, which is about five items, and then you have competitive items, and then
1308 you have items below U. S. Standards, good food, but not high grade. In speaking of 2,000 items, naturally I had 25 or 30 items that come under the one heading of peas. The same thing applies to corn, the same thing applies to other commodities.

Q. And you would have about six items under the heading of salt?

A. Yes.

Q. And you based your figures upon just an estimate of what the salt was as compared with the other items that are handled by your firm?

A. Yes.

Mr. Haslett: I think that is all.

Recross-Examination by Mr. McBride.

Q. Mr. Alterman, I believe you testified that in 1940 you purchased 1,000 cases of Morton's blue can?

A. Approximately.

Q. And approximately the same amount in 1941?

A. Yes, sir.

Q. Why didn't you drop the item for both years?

A. I beg your pardon?

Q. Why didn't you drop the item for both years?

Mr. Haslett: I object to that question.

Trial Examiner Purcell: Let me have that question reread.

1309 (The question referred to was read by the reporter.)

Mr. Haslett: I object to the question, unless counsel explains what he means by dropping an item. Do you mean drop it from sale, or drop the advertising?

Mr. McBride: I will reframe the question.

By Mr. McBride:

Q. Why didn't you refuse to purchase, or terminate your purchases of Morton's blue can, instead of keeping your volume up for both years?

A. There is a consumer demand for Morton's round package salt. To be a good jobber, you are supposed to supply the demand, and we try to be good jobbers.

Q. So, you supplied it at approximately the same volume and the same price during 1940 and 1941?

A. Yes, sir.

Mr. McBride: I think that is all, Mr. Examiner.

Mr. Haslett: That is all, thank you very much, Mr. Alterman.

(Witness excused.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the Commission and counsel for the respondent, that Colonial Stores, Inc., of Atlanta, Georgia, is in competition with other retail grocery stores selling groceries and allied products direct to the consuming public in all areas
1310 where the Colonial Stores operate?

Mr. McBride: It is so stipulated, subject, however, to the objection which I originally made at the outset of these hearings, to the use of the word "competition", and I reserve my objection to that use in this stipulation. Otherwise, I so stipulate.

Trial Examiner Purcell: Let the record so show.

Mr. Haslett: I will call Mr. Moss.

J. D. MOSS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you please state your name for the record, Mr. Moss?

A. Joe David Moss.

Q. And where do you reside, sir?

A. 149 Ponce de Leon Court, Decatur, Georgia.

Q. And is Decatur near Atlanta?

A. Yes.

Q. A suburb of Atlanta?

A. Yes.

Q. In what business are you engaged, sir?

A. I am a buyer for the Great Atlantic & Pacific
1311 Tea Company, Atlanta unit.

Q. And the Atlanta unit is located in Atlanta, Georgia?

A. Our warehouse is, the unit comprises the stores.

Q. Now, have you any other warehouses under the supervision of the Atlanta warehouse?

A. We have a sub-warehouse.

Q. Where?

A. In Knoxville.

Q. In Knoxville, Tennessee?

A. Yes, and a distributing point in Chattanooga, Tennessee.

Q. They are the only warehouses and distributing points under the supervision of the Atlanta warehouse of the Great Atlantic & Pacific Tea Company?

A. That is correct.

Q. How long have you been with the Atlantic & Pacific Tea Company?

A. Since 1928.

Q. In what capacity, sir?

A. I started as a clerk, assistant buyer and buyer.

Q. You are now the buyer?

A. Yes.

Q. For this particular territory?

A. Yes, sir.

Q. And will you state geographically what territory is covered by the A&P Stores that are serviced out 1312 of the Atlanta warehouse?

A. We supply the stores in and around Atlanta, go up into East Tennessee, and down as far as Albany, Georgia, Macon, Columbus, and Augusta, and around to Athens, Georgia. We have a couple of stores in South Carolina and a couple in Alabama.

Q. And what type of stores are they?

A. We have super markets and our regular service stores.

Q. And does the A&P Tea Company have any competitors?

A. Yes.

Q. Is the Colonial Stores, Inc., a competitor of A&P Tea Company in Atlanta?

A. Yes, sir.

Q. And in other territories, also?

A. Yes, sir.

Q. And there are other chain grocery stores selling

groceries and allied products to the consuming public in all areas where the A&P operates, is that correct, sir?

A. Would you please state that over?

Mr. Haslett: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: To the best of my knowledge, yes.

By Mr. Haslett:

Q. In addition to the competitors that you have just stated, there are independently owned retail stores
1313 operating in all areas where A&P operate, selling groceries and allied products to the consuming public in competition with the A&P?

A. To the best of my knowledge, yes.

Q. Does your company sell salt to the consuming public?

A. Yes.

Q. Does it sell any of Morton's round package blue label free running and iodized salt?

A. Yes.

Q. How does your company get that product from the Morton Salt Company?

A. It is shipped in pool cars.

Q. Do their salesmen call at your office soliciting orders from your company?

A. Occasionally.

Q. And as a result of those orders, commodities are shipped to you by the Morton Salt Company?

A. I didn't understand that.

Q. As a result of the orders placed with the salesmen, Morton Salt Company commodities of salt are shipped to you from the Morton Salt Company?

A. Yes, we give them orders and they are shipped.

Q. And they come in pool cars, you say?

A. Yes, we buy in pool cars.

Q. What type of salt does your company purchase
1314 from the Morton Salt Company?

A. We buy the round package that you speak of, the blue.

Q. Is that the only one?

A. That is the only one we are buying in Atlanta, sir.

Q. And do you buy any other types in any other warehouse?

A. I couldn't answer that, I don't know.

Q. I mean, under the Atlanta supervision?
A. I understand.
Q. My questions are confined to the Atlanta supervision of the A&P.
A. Yes, sir.
Q. Do you have occasion to place orders with the Morton Salt Company direct without the solicitation of salesmen?
A. We call our orders in to the broker. We know about when the car is to move, and we will tell him we want to get in on a pool car.
Q. And where is your broker located, sir?
A. Here in Atlanta.
Q. Do you know the price which your company pays for Morton's round package blue label free running and iodized salt per case?
A. Yes.
Q. What is that price, sir?
A. The list price is $1.50.
Q. Per case?
1315 A. Per case.
Q. That is for both types of salt?
A. That is right, and there is a quantity discount of 10-cents per case.
Q. You say, you receive a quantity discount?
A. Of 10-cents per case, yes.
Q. And you receive it from the Morton Salt Company?
A. From the Morton Salt Company.
Q. And how is that paid, sir?
A. By a credit memorandum.
Q. And it comes to you direct from the Morton Salt Company in the form of a credit memorandum?
A. Yes.
Q. Do you know whether or not your company receives any other discounts or allowances from the Morton Salt Company?
A. I do not know.
Q. That is the only one you have any knowledge of, sir?
A. That is correct.
Q. Do you know approximately the number of cases that your company purchased from the Morton Salt Company in the year 1940 in the Atlanta warehouse only, sir?
A. Yes, 7,214, approximately.
Q. How about the Knoxville warehouse?

A. 846.

Q. And Chattanooga?

1316 A. We weren't working there then.

Q. Now, in 1941, sir?

A. 7,297.

Q. That is, through the Atlanta warehouse?

A. The Atlanta warehouse, yes.

Q. And in Chattanooga?

A. 410.

Q. 410 in Chattanooga?

A. Yes.

Q. How about Knoxville?

A. 1,323.

Q. 1,323?

A. Yes, sir.

Q. Now, referring to the year 1940, did your office receive a credit memorandum from the Morton Salt Company of 10-cents for each case purchased from the Morton Salt Company of its blue package free running and iodized salt for that year, sir?

A. Yes.

Q. And your credit memorandum was used in payment of your obligations to the Morton Salt Company?

A. Yes.

Q. Is the same true as to 1941?

A. Yes, sir.

Q. And the credit memorandum was used to pay

1317 the obligations during that year, is that correct, sir?

A. Yes, sir.

Q. Is the price which your company pays for its requirements of salt an important factor in your business? Do you understand the question, sir?

A. In what respect?

Q. Well, is the price which your company pays for any of its commodities, or all of its commodities, an important factor in your business?

A. Yes.

Q. Now, confining your answer to salt, is the price at which your company pays for salt an important factor in the salt end of your business?

A. Yes.

Q. And is the price at which your competitors sell salt to the consuming public given consideration in determining the price at which your company sells salt?

A. I couldn't answer that, I don't know.
Q. You don't know, sir?
A. No, I am not the sales manager.
Q. May I see those invoices you have, sir?
A. Yes, sir.
Q. What is the price at which your company sells Morton's round package free running salt for in its super markets, per package?
1318 A. For what period?
Q. For the year 1940, if you know, sir.
A. The retail in the Georgia super markets was 8-cents in 1940. The retail in the Knoxville, Tennessee, super market was 7 cents per package. In our regular stores, as I term them, 9-cents, except Chattanooga and Knoxville regular stores, where it was two packages for 15-cents.
Q. Now, in 1941?
A. Eight-cents in our Georgia super markets until July 17th, and then it was reduced to 7-cents per package.
Q. And Chattanooga, sir?
A. Seven-cents.
Q. And in Knoxville?
A. These are super markets, now, that I am giving you.
Q. Yes.
A. Seven-cents in the Tennessee super markets, that is, Knoxville and Chattanooga.
Q. Now, how about the regular stores, sir?
A. Chattanooga regular stores, two for 15, Knoxville regular stores, two for 15, until September 22nd, and then it was advanced to 9-cents.
Q. Advanced on September 22, 1941, to 9-cents?
A. That is right, in the regular stores, in Knoxville.
Q. Do you know the reason for that advance, sir?
A. I could not tell you, sir.
1319 Q. How many super markets do you operate in the territory that you have the supervision of purchasing of?
A. We have 35 as classed by us as super markets. They are supers and special development stores, as we term them.
Q. And how many regular stores?
A. Seventy-seven.
Q. Seventy-seven?
A. Yes.
Q. That is in Chattanooga and Knoxville?

A. That is all stores supplied by the Atlanta warehouse, or supervised by the Atlanta warehouse.

Q. Which includes Chattanooga and Knoxville?

A. That is correct.

Q. When salt comes to your company, I believe you stated it comes in pool cars?

A. Correct.

Q. And is it put on your siding?

A. No.

Q. Where is it located, sir, when it arrives?

A. It is located at the Loeb Apte siding. They usually deliver it for us at our convenience, or we send our trucks for it.

Q. And do you charge the Morton Salt Company for that cartage?

A. No, we do not, it is bought f. o. b. pool cars,
1320 Atlanta.

Q. Does your company do any promotional work in connection with the resale of Morton's round package salt to the consuming public?

A. I can't answer positively but I am not exactly sure, we advertise in the newspapers. I don't know the specific dates, I couldn't swear to that, so you will have to take that kind of an answer, because I am the buyer, I am not the promotion man. To my knowledge, they do advertise it, but I couldn't swear to it.

Q. Do you know whether Morton Salt Company pays your company for that service?

A. I do not know.

Q. Does your company in its Atlanta office receive any discount, allowances or rebates of any kind, other than the 10-cents per case, if you know, sir?

A. You are speaking of Morton's salt?

Q. Yes.

A. No, sir.

Q. Do you know whether the Atlanta branch of the A&P Tea Company purchases $50,000 worth of salt from the Morton Salt Company during a 12 consecutive months' period?

A. I haven't multiplied this out, I couldn't tell you without that.

Q. Those are the figures of all the salt that was purchased?

1321 A. Now, you are speaking of Morton's salt?

Q. That is right, in the Atlanta office only.

A. That is the approximate figures, and I think they are very nearly correct. We will have to multiply the cost by the quantity there.

Q. That would be $1.50 times the number of cases?

A. That is right.

Trial Examiner Purcell: Did you confine your last question to Morton's salt?

Mr. Haslett: That is right.

Trial Examiner Purcell: On the $50,000 basis?

Mr. Haslett: That is correct.

By Mr. Haslett:

Q. Do you know whether or not the Atlanta office of the Great Atlantic & Pacific Tea Company purchases from all sources, $50,000 worth of salt during a 12 consecutive months' period?

A. I didn't understand the question.

Mr. Haslett: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I couldn't say without checking our records.

Mr. Haslett: Mr. Reporter, I hand you four documents and ask that you mark them for identification as Commission's exhibit 113-A, B, C, and D.

1322 (The documents referred to were marked "Commission's Exhibit 113-A, 113-B, 113-C and 113-D" for identification.)

By Mr. Haslett:

Q. Mr. Moss, I will ask you to refer to Commission's exhibit No. 113-A, which I hand you herewith, and ask you to describe what that is, if you know, sir?

A. This part here?

Q. Yes.

A. This is something that we attach to invoices, a piece of paper, giving the information of when the payment is due, and the order number, and when the bill is finally paid.

Q. Does it have your order number on it, sir?

A. Yes, we show that on our records.

Q. What is that number, sir?

A. 4082.

Q. An items?

A. Items, it has "net" here.

Q. Now, I will ask you to refer to Commission's exhibit

for identification No. 113-B, and ask you to state what that is, sir?

A. This is a Morton Salt Company invoice, numbered 40569, our order No. 4082.

Q. Under date of what day, sir?

A. April 22, 1941.

1323 Q. Now, I will refer you to the next exhibit, known as Commission's exhibit No. 113-C for identification, and ask you to state what that is?

A. This is our order No. 4082, issued to the Morton Salt Company.

Q. Has it a date, sir?

A. It is dated April 8, 1941.

Q. Now, I will refer you to Commission's exhibit No. 113-D for identification, and ask you to describe that, sir?

A. This is a record of our stores receiving the salt after it was received at the warehouse. It is a distribution, in other words.

Q. Has that a date, sir?

A. That is dated "Received April 30th."

Q. 1941?

A. 1941.

Mr. Haslett: I offer into evidence Commission's exhibit 113-A, B, C, and D.

Trial Examiner Purcell: Any objection to the instruments, Mr. McBride?

Mr. McBride: If the Examiner please, I have no objection to Commission's exhibit No. 113-A, and none to Commission's exhibit No. 113-B.

I will have to object to Commission's exhibit for identification Nos. 113-C and 113-D, my reason being they

1324 are penciled files on selling prices. There apparently is no connection between those two instruments and the invoice. I have no way of knowing how the figures are arrived at, and for what purpose they are used, and I don't wish to be bound by anything in either Commission's exhibit 113-C or 113-D. I might add that apparently Commission's exhibit No. 113-C and D involve internal operations or distribution. Accordingly, any exhibit covering that phase of the business of the Great Atlantic & Pacific Tea Company is beyond the issues of this proceeding and the scope of these issues.

Mr. Haslett: I don't agree with that statement at all, because as the witness has stated, Commission's exhibit for identification 113-C is an order number for the com-

modities as shipped from the Morton Salt Company, as represented by Commission's exhibit No. 113-B, and it certainly has something to do with it.

Commission's exhibit No. 113-D, as the witness has testified, is the distribution of the commodities as shown by the purchase from the Morton Salt Company as represented on Commission's exhibit No. 113-B, all perfectly relevant and material to the issues in this case, and I offer them.

Mr. McBride: I will make one final remark, as the Examiner looks at those exhibits. 113-C is not an order, apparently, of the Morton Salt Company, but a branch store order, which involves internal operations of the
1325 Great Atlantic & Pacific Tea Company, and which Morton Salt Company probably never saw. Exhibit 113-D, again, is internal distribution of the Great Atlantic & Pacific Tea Company by itself, and with which Morton Salt Company has not one thing to do.

Trial Examiner Purcell: Commission's exhibit 113-C and D are both directed to the Morton Salt Company. Let me ask you, Mr. Witness, having special reference to Commission's exhibits 113-C and D, are these papers made in the regular course of your business?

The Witness: Yes, sir.

Trial Examiner Purcell: And is it customary in the transaction of your business to fill in order blanks and distribution blanks similar to these?

The Witness: Yes.

Trial Examiner Purcell: And these were obtained by you from your files of the Great Atlantic & Pacific Tea Company?

The Witness: Yes.

Trial Examiner Purcell: And they all pertain to the same transaction?

The Witness: Yes.

Trial Examiner Purcell: Your objection is overruled, sir.

Mr. McBride: Mr. Examiner, may I take the wit-
1326 ness on those same exhibits, please?

Trial Examiner Purcell: Yes, sir.

By Mr. McBride:

Q. Referring now to Commission's exhibit No. 113-C, which is labeled "Branch store order," that is a Great Atlantic & Pacific Tea Company form, is it not?

A. That is correct.

Q. And that goes from the branch store to the purchasing warehouse of the Great Atlantic & Pacific Tea Company?

A. No, we give that to the seller.

Q. To the seller?

A. That is right.

Q. But when you give it to the seller, the only thing which appears thereon is the quantity and the description of the items offered?

A. And occasionally we put the cost on it. It is supposed to be the cost, and I believe in that particular transaction,—I would have to look at it—we might price it here, because the local man would not know the list price on it.

Q. But, is it customary at the time that exhibit is offered to the seller, to put the selling price on it?

A. No, sir, that is done in our office for our own record.

Q. And has nothing to do with the Morton Salt Company at all in this particular instance?

A. No, sir, it does not.

1327 Q. Did you have anything to do with putting the selling price on there?

A. No, sir, our sales department did, though.

Q. But you personally, as buyer, have no supervision over that?

A. No, sir.

Q. Now, with respect to Commission's Exhibit No. 113-D for identification, that is one of the Great Atlantic & Pacific Tea Company's forms, is that correct?

A. That is correct.

Q. Is that ever submitted to the Morton Salt Company?

A. No.

Q. Was this particular sheet here submitted to the Morton Salt Company?

A. Not to my knowledge, no.

Q. And any figures which appear thereon are simply figures made by the internal works with respect to the distribution of commodities to the stores?

A. Right.

Q. Were those figures made by you?

A. They were made by our office.

Q. By the selling organization, is that correct?

A. That is right.

Q. And any figures which purport to be prices thereon are likewise made by the selling organization?

1328 A. That is correct.

Q. You had no supervision yourself, no connection with any insertion of any price items on Commission's exhibit 113-D for identification?

A. I don't understand your question.

Q. Let me reword it. In so far as any figures on Commission's exhibit 113-D for identification are concerned, that purport to be resale price figures, you had no connection or no supervision over those figures?

A. No, sir.

Mr. McBride: Mr. Examiner, I renew my objection to those two exhibits. I don't know how these figures were arrived at. This witness didn't put them on there with respect to the retail sale price item.

Trial Examiner Purcell: My ruling, Mr. McBride, as to the admissibility of the exhibit stands, and the instruments described as Commission's Exhibit No. 113-A, B, C and D will be so marked by the reporter and received in evidence.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 113-A, 113-B, 113-C and 113-D" were received in evidence.)

Of course, Mr. McBride, you are familiar with U. S. Code annotated, Title 28, Paragraph 695, which I will quote to you off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

1329 Mr. McBride: My objection still shows on the record, and I will reserve the right of appeal.

Trial Examiner Purcell: Oh, yes.

Mr. Haslett: Mr. Reporter, I hand you four documents and ask that they be marked for identification as Commission's exhibit 114-A, B, C and D.

(The documents referred to were marked "Commission's Exhibit 114-A, 114-B, 114-C, and 114-D" for identification.)

By Mr. Haslett:

Q. Mr. Moss, I show you Commission's exhibit No. 114-A, and ask you to state what that is, sir?

A. This is a form that we attach to the invoices describing the order number, the date and stamping on it that the bill has been paid.

Q. And what is Commission's exhibit No. 114-B?

A. This is an invoice from the Morton Salt Company, invoice No. 39866, directed to the A&P Tea Company, Atlanta, Georgia.

Q. Has it a date, sir?

A. It is dated April 18, 1941.

Q. And what is Commission's exhibit for identification 114-C?

A. This is our warehouse order No. H-1151, dated April 9, 1941.

1330 Q. Is that directed to the Morton Salt Company?

A. To the Morton Salt Company, in care of the broker.

Trial Examiner Purcell: What is that number?

The Witness: H.-1151.

By Mr. Haslett:

Q. Has it a date, sir?

A. It is dated April 9, 1941.

Q. And I will refer you to Commission's exhibit No. 114-D and ask you to state what that is?

A. This is a receiving order made by our receiving warehouse, No. E-3287, dated April 22, 1941.

Q. Is Commission's exhibit for identification 114-A, 114-C and 114-D used in connection with the purchase of salt, as shown by Commission's Exhibit 114-B?

A. That is right.

Mr. Haslett: I offer the documents in evidence, Mr. Examiner.

Mr. McBride: If the Examiner please, I have no objection to Commission's exhibit for identification No. 114-A. I have no objection with respect to the printed and typewritten portion of Commission's exhibit for identification No. 114-B, but I do object to any blue penciled notations thereon, as wholly unexplained. I have no objection to Commission's exhibit for identification No. 114-C, nor to Commission's exhibit for identification No. 114-D.

1331 Trial Examiner Purcell: Mr. Haslett, will you accept the reservation of Mr. McBride with regard to his objection to the penciled notations on Commission's exhibit for identification 114-B?

Mr. Haslett: Not until I find out what they are, sir.

By Mr. Haslett:

Q. I refer you, Mr. Moss, to Commission's exhibit 114-B and call your particular attention to the blue penciled notations that appear thereon. Will you kindly explain what they are, if you know, sir?

A. This is working out our final net cost after we paid cartage from the pool car to Atlanta. This first notation here, that is, taking into consideration the 10-cent per case quantity discount, this arrives at our actual cost here, this 1.4184 per case. That is the way we arrive at our cost. Now, these figures over here are extended out. By multiplying 75 by this, you are supposed to get this; now, whether it does or not, I don't know.

Q. Now, what is that figure there, sir?

A. That is the extension.

Q. What is that, $106.38?

A. That is right.

Q. That is the first item that appears on Commission's Exhibit 114-B?

1332 A. That is right.

Q. The same would be true of the next item of 100 cases of Morton's iodized salt?

A. That is right, $141.84. You multiply 100 times that, and that gives you this figure. We even show how much it costs us to get the merchandise from our pool car to our warehouse, and we throw that in. We show here on this order crediting the cost of 10-cents per case, and then have to add back for the cartage. This is arriving at our own actual cost.

Mr. McBride: May I take one final look and I think I will withdraw my objection. I will withdraw my objection.

Trial Examiner Purcell: All objections having been withdrawn, the instruments described as Commission's Exhibit 114-A, B, C, and D for identification will be admitted in evidence, and marked by the reporter as Commission's exhibit No. 114-A, B, C, and D.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 114-A, 114-B, 114-C, and 114-D" were received in evidence.)

By Mr. Haslett:

Q. Mr. Moss, Commission's Exhibit 114-A, B, C, and D, which I hand you herewith, I will ask you to state whether or not such exhibit is typical of the invoices and the

1333 various memoranda attached thereto, that are used in the regular course of business by the Great Atlantic & Pacific Tea Company's branch at Atlanta, Georgia, and that the invoice is typical of the invoices received from the Morton Salt Company upon the purchases of the products shown thereon?

Mr. McBride: May I have that question re-read, please?

(The question referred to was read by the reporter.)

The Witness: Yes.

Mr. Haslett: I think that is all, and I have no further questions to ask this witness, and will give him to Mr. McBride for cross-examination.

Mr. McBride: I have no questions, Mr. Examiner.

Mr. Haslett: Just one further question, Mr. Moss.

By Mr. Haslett:

Q. Mr. Moss, is the Great Atlantic & Pacific Tea Company, at Atlanta, Georgia, in competition with the Big Apple Stores of the Alterman Brothers?

A. They are retailers in the same market, I will answer it that way, sir.

Q. Do they sell groceries and allied products in competition with you people?

A. That is correct.

Mr. Haslett: I have nothing further. Thank you

1334 very much, Mr. Moss, for coming.

May it please the Examiner, I would like for the record to show that Commission's exhibit No. 113-A, B, C, and D, and Commission's exhibit No. 114-A, B, C, and D, are to be photostated by the Commission and the originals returned to the buyer, Mr. Moss, of the Great Atlantic & Pacific Tea Company, at its branch in Atlanta, Georgia, at the time it can be done by the Commission.

Trial Examiner Purcell: Very well. Do you have anything further of this witness?

Mr. Haslett: No, sir. You are excused, Mr. Moss.

(Witness excused.)

1335 EMORY SPEER LANIER was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your name for the record, Mr. Lanier?
A. Emory Speer Lanier.
Q. And do you reside in Atlanta, Georgia?
A. Yes, sir.
Q. In what business are you engaged?
A. Wholesale groceries.
Q. And how long have you been in the wholesale grocery business?
A. Since 1920.
Q. Since 1920?
A. Yes, sir.
Q. And with what company are you connected?
A. Lanier Brothers, me and my brother.

1336 Q. Where is that company located?
A. At 1057 Lee Street, S. W., our main office, and I also operate three other places in the city of Atlanta under the name of Pay & Take.
Q. Pay & Take?
A. Yes, sir.
Q. All of them are wholesale groceries?
A. Yes, sir.
Q. And all of them are within the city of Atlanta?
A. Yes, sir.
Q. What is the name of your business, sir?
A. Lanier Brothers. We run our main warehouse under the name of Lanier Brothers.
Q. I see.
A. But we operate these other three places under the name of Pay & Take, although it is all owned by Lanier Brothers.
Q. Is Lanier Brothers a corporation?
A. No, sir, just a partnership.
Q. And is Pay & Take a corporation?
A. No, sir.
Q. Are you in partnership with your brother?
A. Yes, that is right.
Q. And you jointly own both of the firms?

A. That is right, all of them.

Q. Now, do you sell groceries and allied products
1337 to the retailer stores?

A. Yes, sir.

Q. So, the retailer stores are your customers?

A. That is right.

Q. Have you any competitors at all?

A. Yes, sir.

Q. Would you name some of those competitors?

A. Well, Paradies & Rich, H. L. Singer,—he handles some fancy groceries, but he also handles the same line, too, that I do—and Lichtenstein, and Alterman Brothers, they are all in about the same line of business that we are.

Q. Did you at one time compete with the C. D. Kenny Company.

A. Well, I wouldn't say that. I wouldn't say that I did compete with them; however, we sometimes sold the same customers.

Q. I see.

A. In other words, maybe I sold their customers or they sold my customers, but they were in business, but they are not in business at present.

Q. They did operate a branch here in Atlanta?

A. Yes, sir.

Q. And when did they cease operations of the branch here, if you know, sir?

A. A little over a year ago.

1338 Q. Up until that time, they did sell groceries and allied products to the retailer customers in competition with you?

A. Yes, sir.

Q. And do you encounter the competition of Thomas & Howard?

A. No, sir, I do not.

Q. You do not, sir?

A. No, sir.

Q. And do you encounter the competition of the Timberlake Grocery Company?

A. Not that I know of, because we don't go outside of the city, you might say, we don't work further than Stone Mountain.

Q. You just operate within the trade territory of Atlanta?

A. That is right.

Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it make any purchases from the Morton Salt Company?
A. Yes, sir.
Q. Does it purchase from other processors of salt, also, sir?
A. Yes, sir.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. 24/26 ounce packages, round packages.
Q. Is that their free running and iodized salt?
1339 A. Yes, both.
Q. In the blue labeled package?
A. That is right.
Q. How are orders placed by your company with the Morton Salt Company for its requirements?
A. Well, it is given to the Morton Salt Company's representative. He calls on us most every week. I won't say every week, but occasionally, once every month, anyway, and we only pick up small amounts of it as we need it.
Q. Do you know approximately the number of cases that you purchased in 1940?
A. Yes.
Q. What is that figure, please, sir?
A. Approximately 412 cases.
Q. And that is of the blue label round package free running and iodized salt?
A. Yes, sir.
Q. Combined?
A. That is right.
Q. And do you know approximately the number of cases you purchased in 1941?
A. 774.
Q. 774 cases?
A. Yes, sir.
Q. And that, of course, was the blue label round
1340 package free running and iodized salt?
A. That is the only thing we do handle, that I have ever bought from Morton that I recall, in the way of salt.
Q. Do you know the price which your company pays for that particular product?
A. $1.50.

Q. Is that per case?

A. Yes, sir.

Q. Do you know the price at which your company resells it to its retailer customers?

A. Yes, sir.

Q. What is that price?

A. $1.60.

Q. $1.60?

A. Yes, sir.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company upon its purchases of the round package free running and iodized salt?

A. No, sir.

Q. You do not receive any discount?

A. No, sir.

Q. Do you receive any discounts whatsoever from the Morton Salt Company?

A. None at all.

Q. Is the price at which your company pays for its
1341 requirements of salt an important factor in your business?

A. Well, yes, it would be, naturally.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price that it sells its salt?

A. Yes, sir.

Q. Does your company purchase salt in carloads, on a carload basis, from the Morton Salt Company?

A. No, sir.

Q. Just in pool cars?

A. That is right.

Q. Would your business be affected by the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price that you were charging for salt of the same grade, quality and size?

A. Yes, sir.

Q. And what effect would it have on your business if one of your competitors was purchasing Morton's salt at $1.40, while at the same time you were purchasing it at $1.50?

Mr. McBride: I object to that, if the Examiner please.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: Well, it would affect me to the extent
1342 that if I didn't meet the competition, I wouldn't make the sale, that is all. I couldn't sell it and make a profit.

Q. I believe you misunderstood my question, Mr. Lanier. If one of your competitors was buying salt at $1.40 a case, that is, the round package salt, and you were paying $1.50 a case, would that in any way affect your business?

A. Yes, sir.

Q. Adversely?

A. Yes, sir.

Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's exhibit No. 52, except as to the quantity of the product, date, number of the invoice, destination and consignee, have passed between the respondent, Morton Salt Company and Lanier Brothers, of Atlanta, Georgia, who is a customer of the respondent, Morton Salt Company, and that said Commission's exhibit No. 52 is typical of such invoices for the sale of salt of the same type that appears thereon, that pass between the respondent herein and its customer, Lanier Brothers of Atlanta, Georgia, and that such invoices have in the regular course of the respondent's business passed between the respondent and its said cus-
tomer; Lanier Brothers of Atlanta, Georgia, since the
1343 respondent began the sale of, and the said customer, Lanier Brothers of Atlanta, Georgia, began the purchase of the type of products that appear on Commission's exhibit No. 52.

Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. Does your company do any missionary or promotional work in connection with the sale of Morton's salt?

A. No, sir, no more than any other item that we carry in stock.

Q. How many salesmen do you employ, sir?

A. There is only one that works the trade regularly. My brother calls on the trade about two evenings out of the week.

Q. And you have one salesman in addition to your brother?

A. Yes, sir.

Q. And he works the trade constantly?

A. Yes, sir.

Q. And he solicits orders for the sale of Morton's salt to your customers?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Lanier, your Pay & Take branches are 1344 cash and carry wholesale houses? Is that correct?

A. Yes, sir.

Q. Is that also true of the Lanier Brothers house that operates under that name?

A. Well, I would say that 50 per cent of it was. We do have customers that we charge and deliver to.

Q. But as to 50 per cent of your main house and as to all of your Pay & Take houses, that is on a cash and carry basis?

A. Yes, sir.

Q. Do you recall, Mr. Lanier, approximately how many cases of blue can Morton salt your Lanier Brothers was buying prior to 1940, per year?

A. Well, I didn't look up those records, no, sir.

Q. You just checked the two years?

A. I don't imagine that since 1931, it has been any greater, if as great as it was in 1941. Prior to that time, it was probably larger.

Q. Now, what is your price to the retail trade of Morton's blue package per case?

A. $1.60.

Q. $1.60?

A. Yes, sir.

Q. And that price has been in effect for some time, has it?

A. Yes, sir.

Q. The last four or five years?

1345 A. Yes, that long or more.

Q. Can you account for the increase from 412 cases in 1940 to 774 cases in 1941?

A. Yes, sir.

Q. How would you explain that increase?

A. Well, we built our new warehouse and operate now up in this new place at 3057 Lee Street.

Q. And increased your volume accordingly as a result?

A. Yes, sir, not only on Morton's salt, but everything else.

Q. On all of the lines that you carry?

A. Yes.

Q. I believe you stated, also, Mr. Lanier, that you didn't particularly regard C. D. Kenny as a competitor of yours while that company operated a branch in Atlanta, is that correct?

A. Well, we sold some of the same trade, as I stated. We sold some of the same trade, but they had salesmen that would work the trade, and my salesmen worked the trade, too, some of the same trade.

Q. By and large, then, do I infer correctly that you have what you regard as a regular list of customers in the territory that you work?

A. Well, yes, the salesman calls on them regular, and as a result, sells them something, you know. I don't 1346 say he sells them all they buy. They might buy from Mr. Lichtenstein, they might buy from Mr. Paradies, or Mr. H. L. Singer, but we sell them, you know, something every week. They are our regular customers. Our salesman has got a regular round that he calls and collects.

Q. And that would be true with salt, as well as all other commodities that your company sells?

A. That is right.

Mr. McBride: I believe that is all, Mr. Lanier.

Redirect Examination by Mr. Haslett.

Q. The salesmen are always soliciting new business, aren't they, Mr. Lanier?

A. Yes, sir.

Q. Trying to increase the volume of your business?

A. Yes, as a rule, that is one thing a salesman does, naturally he wants to make as good a showing as he can.

Mr. Haslett: I think that is all, Mr. Lanier.

Mr. McBride: No further questions.

(Witness excused.)

Trial Examiner Purcell: Your next witness.

Mr. Haslett: Mr. Abner Lichtenstein.